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Casenote


After successfully passing the California bar examination, the petitioner was refused certification for admission by a committee of bar examiners on grounds he did not possess the requisite good moral character. The committee's decision was based primarily on acts of civil disobedience committed by the petitioner and his statements in defense thereof. He had been arrested six times while taking part in civil rights demonstrations and "sit-ins" at private business establishments in San Francisco and had twice been convicted as a result of these activities for such misdemeanors as unlawful assembly, trespass and disturbing the peace.\(^1\) When questioned by the committee, the petitioner defended direct acts of civil disobedience to attempt to bring about changes in discriminatory hiring practices and to help effect needed civil rights legislation when traditional means of achieving these goals proved useless.

Upon concluding an independent examination of the record the California Supreme Court (with one dissent) held that the evidence did not justify the committee's finding that the petitioner lacked good moral character and it directed that he be certified for admission to the bar. The court found the decisive question regarding the petitioner's good moral character to be "whether he has committed or is likely to continue to commit acts of moral turpitude."\(^2\) Pointing out that the petitioner's civil rights activities had been peaceful, the court ruled that the crimes for which he had been convicted did not, considering all the circumstances, amount to acts of moral turpitude.\(^3\)

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\(^1\) The petitioner had also been arrested while doing civil rights work in Mississippi and he had been fined for "blocking a footpath" while taking part in a peace demonstration in England.


\(^3\) Id. at 462, 421 P.2d at 87, 55 Cal. Rptr. at 239. The court also considered evidence on the record concerning nine fistfights which the petitioner had been involved in. It found that he had adequately explained three of these and concluded that the other six "can be classified as youthful indiscretions." Id. at 464, 421 P.2d at 89, 55 Cal. Rptr. at 241.

The bar examining committee had the history of the petitioner's pugilistic exploits before it, but its decision as to his moral unworthiness, and the court's subsequent reversal of this decision, seem to have
The *Hallinan* case throws into bold relief the issue of whether a person who deliberately violates laws as a matter of conscience is the type of candidate who should be allowed admittance to the ranks of a profession whose members have customarily professed unswerving obedience to the law. An additional issue implied in the case is whether a present member of the bar is duty-bound to obey all written statutes and common law rules of behavior regardless of his belief that he is obeying a higher code by sometimes breaking certain of these statutes and rules.

I. TRADITIONAL REASONS FOR FINDING ABSENCE OF GOOD MORAL CHARACTER

Almost all of the states require, either by statute or court rule, that an applicant for admission to the bar be of good moral character. However few of these statutes or court rules attempt to define good moral character, this determination normally being made in the first instance by a bar examining committee, with a state court exercising a power of review over the committee’s decision. Bar examining committees may be appointed by a court or chosen by the state bar association.

An applicant’s conviction of a crime of violence or fraud has commonly been cited by courts as adequate for upholding exclusion decisions of bar examining committees. Considering these crimes to involve “moral turpitude” (a term to be discussed infra) courts have reasoned that members of the public should be pro-

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been based primarily on the petitioner’s arrests and convictions in behalf of civil rights and his attitude that civil disobedience was sometimes justifiable. The court noted that a subcommittee of the bar examining committee “had based its findings solely on petitioner’s beliefs and activities in connection with civil disobedience.” *Id.* at 450, 421 P.2d at 79, 55 Cal. Rptr. at 231 n.2.


Lawyers are not the only professional people who must meet the good moral character standard. In Nebraska for example, the same requirement must be met by such varied professionals as embalmers and barbers. *NEB. REV. STAT.* §§ 71-195(1), 71-204 (3) (Reissue 1966).


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6  *IOWA CODE ANN.*, § 610.4 (1950); *IDAHO CODE ANN.* §§ 3-403, 3-408 (1947).


8  *Lark v. West*, 289 F.2d 898 (D.C. Cir. 1961), cert. denied, 368 U.S. 865 (1961) (mail fraud); In re *Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924) (obtaining goods by false pretense, larceny or conspiracy to commit it, forgery and extortion).
tected from the possibility of the person repeating his misdeed while serving them as an attorney. Courts have also been concerned to protect the legal profession against the risk of losing esteem in the eyes of the public through the recidivism of such a member. The possibility of the applicant having reformed is rarely given much weight.

Actual conviction of crime is not always a condition precedent to a finding of bad moral character. A mere allegation of illegal or dishonest behavior appearing on the petitioner's record may be enough to prevent him from obtaining a license to practice.9 One writer has concluded that as to borderline cases of good moral character which come before bar examining committees:

The rejection or acceptance of candidates rests upon the ever changing composition of the character investigation committees. The age, experience, background and degree of tolerance of each member contributes to the ultimate decision in the questioned application, as well as his physical and mental well being on that day.10

II. PERSONAL BELIEFS AS EVINCING LACK OF GOOD MORAL CHARACTER

Character infirmities sufficient to justify rejection of a request for admission to the bar have been found in cases where the petitioner has been convicted of violating a law because of a sincerely and peaceably held belief that adherence to the law would be morally wrong. The conscientious objector cases provide good examples.

A. DENIAL OF ADMITTANCE OR DISBARMENT FOR CONSCIENTIOUS OBJECTORS

The most recent case of this type is In re Brooks.11 During World War II the applicant, then a resident of New York, was classified by his draft board as a conscientious objector. He was ordered to report for transportation to a civilian service camp but refused to do so on grounds that performing this kind of work would also violate the scruples of his conscience. He was convicted for violating a federal law and served a prison sentence. The applicant was refused entry into the Washington bar in 1959 upon

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a finding by the bar association's board of governors that he was not of good moral character. In the opinion of the board the applicant's acts had been "unjustifiably defiant of the laws of the United States." The Washington Supreme Court affirmed. A concurring opinion candidly admitted that "the decisional function herein is purely and simply a matter of value emphasis and personal judgment."

An Illinois case has held that an attorney convicted for refusing to report for induction after his claim to conscientious objector status was denied is morally unfit to remain a member of the bar.

The petitioner in *In re Summers,* properly classified as a conscientious objector under the Selective Service Act, was rejected for bar admission by the Illinois Supreme Court because of that court's conclusion that he could not in good faith take the required oath to support the state constitution, one provision of which required service in the militia in time of war by men of the petitioner's age group. The decision was upheld in the United States Supreme Court by a five-four margin. Justice Black's dissent criticized the majority's opinion by pointing out that (1) Illinois had not drafted men into the militia since 1864, and that (2) no one could say that the state would not exempt men holding views like the petitioner's should it ever activate a militia in the future.

In 1965 Congress amended the Universal Military Training and Service Act (successor to the Selective Service Act) to specifically make the willful burning of draft cards a felony. This law has been upheld by two federal courts of appeal against challenges that it infringed rights protected by the first, fifth and eighth amendments to the Constitution. A person planning to become a lawyer

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12 Id. at 68, 355 P.2d at 841.
13 Id. at 70, 355 P.2d at 842.
14 In re Pontarelli, 393 Ill. 310, 66 N.E.2d 83 (1946).
15 325 U.S. 561 (1945).
16 Id. at 577.
17 "Any person ... (3) who ... knowingly destroys, knowingly mutilates, or in any manner changes any such certificate or any notation duly and validly inscribed thereon ... shall, upon conviction, be fined not to exceed $10,000 or be imprisoned for not more than five years, or both." Universal Military Training and Service Act, § 12(b), 62 Stat. 622 (1948), as amended, 50 U.S.C. § 462(b) (Supp. I, 1965).
18 United States v. Miller, 367 F.2d 72 (2d Cir. 1966), cert. denied, 386 U.S. 911 (1967); Smith v. United States, 368 F.2d 529 (8th Cir. 1966). In a 1967 draft card destruction case heard by the First Circuit Federal Court of Appeals, that court held that § 12(b)(3) of the Universal Military Training and Service Act unconstitutionally infringes first amendment rights. However, the court affirmed the defendant's conviction under § 12(b)(6) of the Act because he had violated a regula-
would choose the draft card burning form of public protest at imminent peril to his professional future as long as In re Brooks and In re Summers remain accepted precedents.

B. HOLDING BELIEFS OF A CONSCIENTIOUS OBJECTOR NOT A BAR TO ENTRY TO PROFESSION

Not all courts have been convinced that being a conscientious objector permanently discolors one's moral character. In 1947 the New York Court of Appeals held that a claim of exemption from military service on conscientious and lawful grounds without proof of insincerity or disloyalty was not evidence of bad moral character which would prevent an applicant from gaining admission to the bar.\(^{19}\)

Another New York case, although concerned with entry into the insurance profession, is nevertheless relevant.\(^{20}\) In his application for an insurance broker's license in New York, the petitioner stated that he had been denied a conscientious objector classification by his draft board and had subsequently been convicted for refusing to report to an induction center. Even though the petitioner had successfully passed an examination for the insurance broker's license he was refused the license on grounds he was not a "trustworthy person" within the meaning of the state law setting out entrance requirements. The state insurance department ruled that the record of the petitioner's conviction showed on its face that he was untrustworthy.

The New York Court of Appeals ordered the insurance department to conduct a hearing as to the sincerity of the petitioner's objections to military service before deeming him untrustworthy. The court emphasized that the petitioner might have sincerely held his beliefs and still not have been eligible for conscientious objector status within the Selective Service Act because his views were essentially political, sociological or philosophical rather than religious. The court stated:

> If it is determined upon evidence that the Selective Service Board believed petitioner to be a sincere person, but one whose beliefs did not entitle him to conscientious objector status under the congressional act, then denial of his application for a license where this is the only evidence of his untrustworthiness would be arbitrary and capricious.\(^{21}\)

\(^{19}\) Application of Steinbugler, 297 N.Y. 713, 77 N.E.2d 16 (1947).
\(^{21}\) Id. at 648, 148 N.E.2d at 292, 171 N.Y.S.2d at 72-73.
A few months before it handed down its *Hallinan* decision, the California Supreme Court held that good faith conscientious objectors who had pleaded guilty and served prison sentences more than twenty years previous for violation of the Selective Service Act had not committed an “infamous” crime within the meaning of a California constitutional provision prohibiting such persons from being allowed to vote.\(^{22}\) The court rejected *In re Brooks* as persuasive precedent in the case.\(^{23}\) This decision of the California high court, coupled with its subsequent holding in *Hallinan*, indicates that it might join New York in refusing to sanction the exclusion of conscientious objectors from professions on character grounds when their sincerely held beliefs have caused them to be in peaceable violation of induction laws.

C. Other Beliefs and Conduct Not Adequate to Deny Bar Membership

A recent Florida case appears in accord with the *Hallinan* approach of refusing to accept sincerely held and peaceably practiced social beliefs as a valid basis for excluding persons from the ranks of the legal profession.\(^{24}\) Here the respondent, a member of both the Florida and New York bars, had been disbarred in a disciplinary proceeding in New York. Subsequently a referee appointed by the Florida bar to conduct a hearing on the respondent’s case recommended that he be either disbarred or suspended. The board of governors of the Florida bar adopted the referee’s findings and ordered the respondent disbarred.

In remanding the cause to the referee the Florida Supreme Court held that he had proceeded on the erroneous assumption that the New York judgment was binding on Florida as to both proof of guilt and the discipline to be administered. The court ruled that the referee was required to make an independent appraisal of the alleged acts of misconduct. The court discovered that the referee had also relied on the respondent’s belief and practice of existentialism as a further ground for declaring him unworthy for continued bar membership. Overruling the referee in this respect, the court stated: “Mere belief in an unorthodox philosophy does not in itself make one unfit to practice law.”\(^{25}\)

In *Application of Levine*\(^{26}\) a committee of the state bar of Arizona believed the petitioner to be lacking in good moral char-

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\(^{22}\) Otsuka v. Hite, 64 Cal. 2d 596, 414 P.2d 412, 51 Cal. Rptr. 284 (1966).
\(^{23}\) Id. at 612, 414 P.2d at 423, 51 Cal. Rptr. at 295.
\(^{24}\) Florida Bar v. Wilkes, 179 So. 2d 193 (Fla. 1965).
\(^{25}\) Id. at 201.
\(^{26}\) 97 Ariz. 88, 397 P.2d 205 (1964).
acter and refused to recommend him for admission. It appeared that the petitioner had worked for the F.B.I. for about eleven months after graduating from law school and then resigned. He sought reinstatement three weeks later but was advised by the F.B.I.'s director, J. Edgar Hoover, that he would not be re-employed. The bar committee gave as its reasons for not recommending the petitioner: (1) that after he was denied reinstatement to the F.B.I. he had written letters to congressional committees charging irregularities in the manner in which the F.B.I. was operated; (2) that he had authored an article in *The Nation* called "Hoover and the Red Scare" in which he had made fictitious representations; and (3) that he had made other derogatory charges against the F.B.I. and its director which were in general not true. The committee felt that the charges tended to undermine the confidence of the public in the F.B.I. and it concluded that the petitioner did not possess the sense of public responsibility which a lawyer should have.

The Arizona Supreme Court reversed the committee and ordered the petitioner admitted to practice. It agreed that many of the statements made by the petitioner about the F.B.I. were based more on educated guesses than on facts. However, it held these statements and the derogatory statements made about the F.B.I.'s director were governed by the principles laid down by the Supreme Court in *New York Times Co. v. Sullivan*—that debate on public issues should be uninhibited even though it includes caustic and sharp attacks on government and public officials.

III. BAR ADMISSION DECISIONS OF THE UNITED STATES SUPREME COURT

A number of bar admission cases have been adjudicated by the United States Supreme Court in recent years. State bar examining committees considering the good moral character of applicants and state courts reviewing decisions of these committees must operate with an awareness of the holdings of these cases.

The Supreme Court has ruled that a person cannot be denied admission to a state bar for reasons of lack of character or fitness without having been given a hearing on the charges made against him either before the committee which examined him or the court.

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27 376 U.S. 254, 270 (1964)
28 Application of Levine, 97 Ariz. 88, 97, 397 P.2d 205, 211 (1964). Another precedent for the Arizona court's holding might have been *Konigsberg v. State Bar*, 353 U.S. 252, 268-69 (1957), where the Supreme Court could not find an inference of bad moral character in vigorous editorial criticism of public officials and their policies.
which reviewed the committee's decision. Fourteenth amendment procedural due process demands that the applicant be entitled to confront and cross-examine those testifying adversely to his character.29

The Supreme Court has laid down as a test for any good moral character qualification which a state requires of an applicant that it have a rational connection with his fitness or capacity to practice law.30 The Court stands ready to review the record of a bar admission case it may hear to determine whether the state's bar examining committee and the reviewing court have correctly applied the "rational connection" test.31

Past membership in the Communist Party when it was a lawful party of the petitioner's state,32 arrests for alleged violation of a state criminal syndicalism law33 or of a federal neutrality act,34 the use of aliases to secure a job,35 or vigorous editorial criticism of public officials and their policies36 have all been held to be improper grounds for denying admission to the bar because of lack of good moral character.

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The Court has perhaps encouraged state appellate courts to do a more thorough and critical job of reviewing the records of bar examining committee decisions; e.g., Hallinan v. Committee of Bar Examiners of State Bar, 55 Cal. 2d 447, 421 P.2d 76, 55 Cal. Rptr. 228 (1966); Florida Bar v. Wilkes, 179 So. 2d 193 (Fla. 1965).


The Oregon Supreme Court held in 1963 that the applicant's active membership in the Communist Party from 1949 to 1957, his failure to disclose that fact in an application for work as a longshoreman in 1953, and his failure to disclose his past Party affiliation in his application for admittance to law school after he left the Party were not sufficient to deny the applicant admission to the Oregon bar when he stated and produced evidence showing he had quit the Party and, primarily, because three highly respected members of the Oregon bar attested to his present good moral character. In re Application of Jolles, 235 Ore. 262, 383 P.2d 388 (1963).

34 Id. at 242-43.
35 Id. at 240-41.
The Supreme Court has, however, held that admission to the bar may validly be withheld from an applicant for refusal to answer examining committee questions as to whether he is a present or former member of the Communist Party. Advancing violent overthrow of the government is an accepted reason for excluding persons from the bar. An examining committee may require an applicant to state whether he is a present or former member of the Communist Party because such information might open up a line of questioning the answers to which would show that the applicant actually does believe in violent overthrow although he may otherwise deny it.

In Spevack v. Klein, a case handed down in 1967, the Supreme Court held that an attorney could not be disbarred for invoking his constitutional privilege against self-incrimination as a reason for refusing to comply with a state court subpoena ordering him to produce records pertaining to contingent fee cases he had handled. In overruling Cohen v. Hurley, the Court concluded that:

"The Self-Incriminaton Clause of the Fifth Amendment has been absorbed in the Fourteenth, ... it extends its protection to lawyers"


The Supreme Court has not held that an admission of present or former membership in the Communist Party would be sufficient by itself to keep an applicant out of the bar. It has held only that failure to answer questions as to present or past membership is enough to prevent admission because such failure obstructs bar examining committees in their proper functions of interrogating and cross-examining candidates about their qualifications. In re Anastaplo, 366 U.S. 82, 88 (1961). The Court's reasoning could apply as well to bar committee questions regarding, for example, an applicant's affiliation with another political party.

A state or federal statute (or a rule passed by a bar committee directly or indirectly provided for by statute) which made Communist Party membership alone grounds for exclusion from the bar might very well run into the constitutional infirmity of a bill of attainder. U.S. Const. art. I, §§ 9, 10, prohibits the federal government and the states, respectively, from passing bills of attainder. In United States v. Brown, 381 U.S. 437 (1965), the Supreme Court struck down as a bill of attainder a federal statute which made it a crime for a person to serve as an officer or as an employee (other than in a minor capacity) of a labor union if he was presently a member of the Communist Party or had been a member within the previous five years. See also Ex parte Garland, 71 U.S. (4 Wall.) 333 (1866).
as well as to other individuals, and...it should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it.42

It is uncertain whether Spevack will reach into the area of bar admission cases. In a dissenting opinion, Justice Harlan expresses a belief that it may.43 If this proves to be true then Konigsberg II44 and In re Anastaplo45 (cases in which the Court held that a state could deny bar admission to persons refusing to say whether or not they were present or former members of the Communist Party) are in serious jeopardy, because the petitioners in those cases raised constitutional issues other than the right against self-incrimination.46

But Spevack was a five-four decision and the concurring opinion of Justice Fortas must be taken into consideration. In the proceedings below in Spevack, the New York Court of Appeals had affirmed the petitioner's disbarment on the strength of, in addition to Cohen v. Hurley, the required records doctrine of Shapiro v. United States.47 Shapiro concerned a federal price control regulation requiring merchants to keep sales records. The Supreme Court had considered these to be records with public aspects and concluded that their compelled production did not violate the Fifth Amendment. In Spevack the Court refused to reach the Shapiro doctrine on grounds it was improperly presented. Justice Fortas agreed that the issue was not appropriately presented. However, he stated how he probably would have voted had the issue been correctly raised:

If this case presented the question whether a lawyer might be disbarred for refusal to keep or produce, upon properly authorized and particularized demand, records which the lawyer was lawfully and properly required to keep by the State as a proper part of its functions in relation to him as licensor in his high calling, I should feel compelled to vote to affirm, although I would be prepared in an appropriate case to re-examine the scope of the prin-

43 Id. at 521 (Harlan, J., dissenting opinion).
46 In Konigsberg II, the petitioner argued that the committee's inquiry infringed his first amendment rights of free thought, association and expression, as enforced upon the states by the fourteenth amendment, and that the state's action in denying him membership for refusing to answer was arbitrary and prohibited by the fourteenth amendment. The petitioner in In re Anastaplo raised similar constitutional points, and the additional one that the examining committee had deprived him of his right to be warned in advance of the consequences of his refusal to answer.
47 335 U.S. 1 (1948).
ciple announced in Shapiro v. United States.... I am not prepared to indicate doubt as to the essential validity of Shapiro.\textsuperscript{48}

Hence even present members of the bar cannot yet be sure of absolute protection from disbarment when they invoke the right against self-incrimination as grounds for refusing to answer official inquiries. Should the "records with public aspects" issue be squarely presented to the Supreme Court in a future disbarment case, the views of Justice Fortas may carry the day. And the Court probably can preserve Konigsberg II and In re Anastaplo by holding that a state may "lawfully and properly" inquire into the present Communist Party membership of a person seeking admission to its bar "as a proper part of its functions in relation to him as [a future] licensor."

IV. VULNERABILITY OF PRESENT MEMBERS OF THE BAR TO DISMISSAL FOR ACTS OF CIVIL DISOBEDIENCE

The petitioner in Hallinan hinted that he might feel justified in sometimes violating laws to further civil rights causes after he became a member of the bar.\textsuperscript{49} Assuming the profession might forgive an applicant for breaking laws in behalf of civil rights before he becomes a lawyer, could it tolerate such behavior from a member in good standing—or would he be subject to disbarment?

A lawyer should consider the statutory grounds for disbarment in his state. Many states make disbarment mandatory upon conviction of any felony\textsuperscript{50} while others provide for disbarment upon conviction of a felony or a misdemeanor if either involves "moral turpitude."\textsuperscript{51} There are a few state statutes, apparently aimed at controlling civil rights demonstrations, the breach of which would be a felony.\textsuperscript{52} If an attorney was convicted of violating one of

\textsuperscript{48} Spevack v. Klein, 385 U.S. 511, 520 (1967) (Fortas, J., concurring opinion)
\textsuperscript{52} The following Louisiana statute was enacted in 1960: "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby... (4) refuses to leave the premises of another when requested to do so by any owner, lessee, or any employee thereof, shall be guilty of aggravated battery, provided such conduct shall lead to a breach of the peace or
these statutes and its constitutionality was sustained, he would be subject to being dismissed from his profession in a state where conviction of a felony means automatic disbarment. If he happened to be a member of the bar in a state other than the one in which he was convicted, it is possible that a bar committee or court of the state where he held membership would not recognize the felony conviction of the other state as cause for disbarment.

Even though an attorney is convicted only of a misdemeanor while engaging in acts of civil disobedience, he may be disbarred if the misdemeanor is found to have involved "moral turpitude." Definitions of moral turpitude range from acts "of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general,"53 to conduct on the part of an attorney "which is contrary to justice, honesty, and good morals."54 Justice Jackson called the term "an undefined and undefinable standard."55

The Hallinan court could not find moral turpitude in the misdemeanors (e.g., disturbing the peace, unlawful assembly, trespass) committed by the petitioner there, considering the circumstances in which they were committed. Whether other courts or bar disciplinary committees would so rule, particularly in the case of a duly admitted attorney, is open to speculation. A decision might turn on whether the attorney acted peaceably and in good faith after traditional means of alleviating a particular civil rights problem had been exhausted without success. The disciplinary committee or court might give weight to the number of times the attorney had been arrested and convicted for taking part in demonstrations and whether he had gained public notoriety as a consequence. Disbarment or suspension have been ordered in the past for attorneys whose behavior created an unfavorable public image.56
The lawyer must also keep in mind canons 29 and 32 of the Canons of Professional Ethics, a violation of which may be grounds for his suspension or disbarment. Canon 29 commands the lawyer to "strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice." Canon 32 states in relevant part:

[The lawyer] advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent.

These two canons contain their share of ambiguities. As to Canon 29, one could argue that a lawyer is not upholding the honor and dignity of his profession when he breaks laws in behalf of civil rights. The lawyer who so acts could counter that he is actually striving "to improve...the law." Canon 32 urges the lawyer to advise his client to comply with "principles of moral law." Does this mean a lawyer may advise his client (and similarly "advise" himself) to risk being convicted of violating a statute or ordinance if he believes a higher law will be obeyed by so doing? Also in Canon 32, the lawyer is warned to observe and to advise his client to observe the statute law, except that until "competent adjudication" has interpreted and construed the statute he may advise his client to act (and probably may act himself) according to what he believes the statute means and whether he considers it to be valid.

One writer concludes that under Canon 32 "a lawyer can and indeed sometimes would be required to counsel his client not to obey a particular statute because the lawyer 'conscientiously' doubted its 'validity' and because, moreover, compliance with such a statute might be contrary to the 'strictest principles of the moral law.'\[^{57}\] Other writers, not directly concerned with interpreting Canon 32, suggest that those who have a good faith belief that a law is being improperly applied to thwart legitimate civil rights goals may peaceably resist the law until courts have "finally and definitively" ruled that the law is being validly applied. After such

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\[^{57}\] Ablah, 348 P.2d 172 (Okla. 1959) (suspension affirmed for attorney who made anonymous and annoying phone calls to doctor's office).

\[^{57}\] Drinan, Changing Role of the Lawyer in an Era of Non-Violent Action, 1 LAW IN TRANS. Q. 123, 125-26 (1964).
a ruling, continued resistance is no longer justified. However, another writer maintains that a final court ruling upholding the law being protested against should not necessarily signal the end to further protest against it. He comments that such a position "would freeze as permanent law the Dred Scott, Plessy, Macintosh, and countless other decisions, which have since been reversed."

There do not appear to be any court cases interpreting a lawyer's obligations under Canons 29 and 32 in the civil rights area.

V. THE PRACTICE OF LAW AS A RIGHT
RATHER THAN A PRIVILEGE

Courts have customarily called the practice of law a "privilege" rather than a "right." The former term has often been used in disbarment and bar admission cases as an important theoretical justification for excluding from bar membership those whose behavior deviates from the norm. The sanction of dismissal, or refusal to grant entry, is in addition to any criminal punishment the person may have received for violating a law. Certain of the conscientious objector cases, reviewed supra, are examples of this dual form of penalty.

Recently, however, courts have begun to view the legal practitioner's status as a right rather than a privilege. Translated into concrete effect, this seems to mean a recognition that a lawyer usually has built up a valuable property interest through years of effort, and that this interest should not be taken from him except for very serious reasons. Assertion of a constitutional right ostensibly available to all citizens alike, or holding a philosophical belief not shared by a majority of one's professional brethren, have been held not adequate to justify dismissal from the bar. In disallowing disbarment as a penalty for a lawyer who sought his constitutional privilege against self-incrimination, the Supreme Court pointed out that "[t]he threat of disbarment and the loss of professional standing, professional reputation, and of livelihood are powerful forms of penalty.

58 Tweed, Segal & Packer, Civil Rights and Disobedience to Law: A Lawyer's View, 36 N.Y. St. B. J. 290, 294 (1964). The authors do not say which court should be the one to "finally and definitively" rule on such a law, but ostensibly it would be the highest court to which an appeal as to the law's validity is carried.


61 In re Stephenson, 243 Ala. 342, 347, 10 So. 2d 1, 5 (1942); O'Brien's Petition, 79 Conn. 46, 55, 63 A. 777, 780 (1906).
compulsion to make a lawyer relinquish the privilege."62 Belief and practice of existentialism, standing alone, struck the Florida Supreme Court as a frivolous and unsubstantial ground for recommending disbarment.63

The privilege concept is also crumbling in the area of admissions to the bar, where it might be thought to have a stronger foundation in that the applicant for admission has not made the same monetary and time investments as has the established practitioner. True, he has not made equivalent investments but nevertheless he has put in "considerable time, energy and expense in obtaining a legal education."64 With this reality in mind some courts have moved to accord to a law graduate who has met the state's legal knowledge requisites a "right" to be admitted to the profession.65 This shift in terminology probably means that reviewing courts will take a more critical look at appeals from bar examining committee decisions which have denied persons admission because of a finding of infirmities in their moral character. An applicant's peaceably held, good faith disagreement with the social, political or religious views of a then current majority of the public may not in the future subject him to the stigma of bad moral character and prevent his entrance into the legal profession.

The opinions of Justice Black, expressed in bar admission and disbarment cases heard by the Supreme Court during the last decade, have been influential in causing courts to turn away from the traditional view that the practice of law is only a privilege. His thoughts on the subject are perhaps most fully stated in his dissenting opinion in Cohen v. Hurley.66 There he argues that a lawyer's abilities, and his practice with its accompanying goodwill, are capital assets. In criticizing the majority's decision that a lawyer could be disbarred for invoking the constitutional privilege against

62 Spevack v. Klein, 385 U.S. 511, 516 (1967). See also Garrity v. New Jersey, 385 U.S. 493 (1967), where the Supreme Court reversed the conviction of police officers who were found guilty of conspiracy to obstruct the administration of traffic laws on the basis of answers they gave to questions of an investigation conducted by the state attorney general. The police officers were confronted by a state statute which provided that if they invoked the privilege against self-incrimination in such an inquiry they forfeited their jobs. The Court emphasized that: "The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or remain silent." Id. at 497.
63 Florida Bar v. Wilkes, 179 So. 2d 193, 200-01 (Fla. 1965).
64 Hallinan v. Committee of Bar Examiners of State Bar, 65 Cal. 2d 447, 452, 421 P.2d 76, 80, 55 Cal. Rptr. 228, 232 n. 3 (1966).
self-incrimination (a decision since overruled by Spevack v. Klein, supra) he stated, "[t]he theory that the practice of law is nothing more than a privilege conferred by the State which it can destroy whenever it can assert a 'reasonable' justification for doing so seems to me to permit plain confiscation."77 The Spevack majority seems to have adopted Black's views that the practice of law is a valuable property right.8 Black has also emphasized that the economic investment which a person studying to become a lawyer is required to make deserves consideration in bar admission cases.69

Another source of influence on courts deciding disbarment and bar admission cases has been Professor Reich's article, "The New Property."70 This is an exhaustive and thoughtful study of the ever-expanding occupational and professional licensing system which is administered through governmental or quasi-governmental agencies. The author urges that "[t]hose forms of [government] largess which are closely linked to status must be deemed to be held as of right. . . . The presumption should be that the professional man will keep his license, and the welfare recipient his pension. These interests should be 'vested.'"71

VI. CONCLUSION

The Hallinan decision appears to break new ground in holding that a person who participates in acts of civil disobedience peaceably and with a good faith belief that he is helping to achieve legitimate civil rights goals does not thereby close the door to his future hopes of becoming a lawyer. The case implies that a present member of the bar who engages in similar activity would not be dismissed for lack of good moral character.

The petitioner's acts of civil disobedience were held by the Hallinan court not to involve "moral turpitude." Whether the person has committed acts of "moral turpitude" is a common standard laid down in statutes and bar committee rules, to be applied in deciding admission and disbarment cases. This is a sufficiently broad standard to allow bar examining or disciplinary committees or reviewing courts in other states to follow the Hallinan reasoning

67 Id. at 146-47 (Black, J., dissenting opinion).
should a case with similar facts come before them. Whatever approach they take, bar committees and reviewing courts must keep in mind the test enunciated by the Supreme Court when determining whether the person's conduct involved moral turpitude and thus stamped his character with an infirmity sufficient to prevent his admission or require his removal from the bar—the basis of the committee's or the court's decision must have some rational connection with the person's fitness to practice law.

Deliberate acts of violence in purported support of a social cause doubtlessly will not be tolerated by bar committees and reviewing courts from a present or prospective member of the bar. But the credentials of a lawyer need not necessarily be denied to one who sincerely and peaceably participates in an act of civil disobedience after it becomes apparent that normal methods of petitioning for improvement through established private or government channels have proved useless.

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