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should be subject to the same penalty. The members felt that the elimination from the practice of members of subversive parties would be more effectively accomplished by adopting the additional ground for discipline stated above, than by making the change in the oath.

The Committee also felt that naming the Communist Party in the permanent oath, taken by all members of the Bar of this and many other states for many years in its present form, would dignify the Communist Party unnecessarily and ascribe to it an undeserved prominence. The general classification of "any party or organization" in the proposed additional ground for discipline was considered preferable to naming the Communist Party specifically. Such a classification was considered practically effective while removing any possible argument of arbitrary application. It was also felt that our suggested approach to the problem (that is, by making it an additional ground for discipline) would be less likely to subject our state Bar to charges of hysteria or intemperate action.

For these reasons the Committee recommended a general criterion applicable equally to present and future members of the Bar, and to any party whose tenets and purposes are to overthrow the United States government by force and violence, and it therefore urges the inclusion of this principle as an additional ground for discipline, and not as a part of the oath for admission.

Respectfully submitted, April 20, 1950.

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#### DISCUSSION OF BAR APPLICANTS TAKING NONCOMMUNIST OATH

BY TRACY E. GRIFFIN

I don't know how long I will have the floor. I don't know how long any man sitting in this room will have the floor as a lawyer.

I take the position—egotistic as you may want to assume—but I happen to know in this state, because of my contacts, something about communism that most people may not know. And when a Bar Association takes the position that it will take no action, I at least want to be that lone voice in the wilderness. And I was the lone voice long years ago, before communism became popular—before the President of the United States, for the last ten days—who discovered that a red herring might be a Red Communist in the United States.

I appreciate I am alone. I am of that brood that favors any action of the Board of Governors, as a matter of principle, and of its committees.

But, gentlemen, side-stepping these issues is exactly what the boys want us to do. It is part of the program. As I say, I am egotistic. I have talked with the men trained in the Lenin schools—with communists of the first water. I have listened to everything the State Department has had to say to Bar Associations. In the American Bar they refused

to take sides in the labor action because Lee Pressman is a member, and they want to keep him comfortable. I don't happen to be one who wants to keep any communist comfortable, wherever he may be—in Korea or anywhere else.

Don't misunderstand me. I have respect for a member of the Communist Party who says he is a member of that party. He has a right to believe what he wants to believe. He may be wrong, or I may be wrong. But those men who cover up as good Americans, following a policy line, are the men I want, and I would like to see this Bar Association say that in the oath—you can vote Fascist, or anything you want to. I would like to see this Bar Association say that any man who takes the oath to be a member of this Bar must take the oath that he is not a member, and has not been a member, of the Communist Party.

You may discipline him—yes. I have tried these people, and I can try them today, and they can present a case to any court or tribunal before whom they are tried, and convince that tribunal that they are good, loyal Americans.

Gentlemen, in five minutes—I say I am egotistic about this thing; you can weigh it and toss it away—in five minutes I can tell whether or not, by their answers, they are communists or not—by the very concept of their answers and the questions I put. I can make their answers for them beforehand. I have done it.

I want any man that joins this Association to say “I am not a communist, or a member of the Communist Party”

Yes, I understand the tenor of their program—and it is their duty to lie and say they are not, but I still like to prosecute them for perjury rather than discipline them.

As I say, I stand alone. I want to make a speech at these conventions (but I never do). Twenty years ago at the meeting of the Washington State Bar Association in Walla Walla, a blind man—grant it, a blind man—made one of the finest speeches as far as language is concerned that is recorded in the annals of the Bar Association. He was a blind man. People had to read to him. That was as plain as the books. He was President of Whitman College. That, gentlemen, was twenty years ago.

He told you then, as plain as the handwriting on the wall, where you would be if this situation developed. It is an elegant thing. I wanted to review it for this convention, with only sidelights of today.

For five years, I have tried to tell you what communism means. I don't pretend to do it today. It is among you. You don't realize it. It is a part of you. If you don't want to take a position—if you don't want to

stand out as one of the states in the Union (because of the fact it may be hysteria)—well, gentlemen, be it done. Take the position where it becomes hysteria, and maybe your children and your widow will be here, but you won't. You won't be lawyers.

I simply want to say as an individual I am opposed to this organization not taking a position, definite and certain, on this issue.

Again, don't misunderstand me. I am called a conservative. I happen to think I am a liberal. I am as much afraid as anybody else in this hysteria, of this country's going too far, by its legislative acts, prohibiting free speech, liberty of the individual, liberty of the press, due to hysteria. I viewed it quite objectively. But I think it is the duty of lawyers to stand on their two feet and say it is a part of the oath of a lawyer that "I am not, and I have never been, a member of the Communist Party."

Only one side issue on that. The Bar of British Columbia refused admission to an applicant of the University of British Columbia, because he is a member of the Communist Party. They have one addition to their oath we do not have. That oath provides—I have the written oath—and the oath provides not only the lawyer's allegiance to the Crown, but that upon the discovery of any conspiracy he shall report to the Crown accordingly. We do not have that, but they have. Definitely Affirmed by the courts of Canada. That no man could be a member of the Communist Party and be loyal to the Crown.

We have not the Crown or the Labor Party of England. I think it is time that some little group on the West Coast—even if it is the West Coast of America, which Mr. Acheson and Mr. Truman charged was utterly expendable. Believe it or not, this Coast was expendable from every standpoint. The blueprints were made. This Coast was expendable, and every man and woman in it as far as the United States of America was concerned, if we had trouble in the Orient. I happen to believe we are not expendable. I was just advocating that we resign from the Union.

But I would like—I don't expect you to. Perhaps you don't as of today realize the infiltration of communism in this country—in the schools, among the lawyers, and of communism among your fellow travelers, which is by far more dangerous.

I simply want to stand before you, realizing that I lose friends, and say to you that I disapprove this report, and that if lawyers are ever going to stand on their feet before they take six-guns in their hands—you had better do it one of these days.

BY ROBERT A. YOTHERS

This is my—shall I say my maiden speech—before Bar Associations. It is perhaps presumptuous of me, being one of the younger members of the Bar to appear before such a gathering of illustrious attorneys here in the state of Washington, and I want to speak to you on a matter Tracy Griffin touched upon.

Although I have not had very much experience, perhaps, in the practice of law as some of you gentlemen, I think, with Tracy Griffin, I have had a great deal of experience in dealing with communism and communists here in the state of Washington and elsewhere, so I speak to you from the heart, and from the basis of my experience, and I say to you that a very serious mistake has been made by your Committee when they do not take a position of including that in the oath of all of us—that you and I and the others who come after us, will take as attorneys to practice law here in the state of Washington.

They have adopted, after careful consideration— And I have a lot of respect for all of the members of this Committee. Harold Shefelman was one of my professors in Law School, and I always feel in his presence I am still a student at the knee of my teacher.

But I can tell them something, and I can tell you something, when I say we should include in the oath you now take, “I am not now and I never have been a member of the Communist Party, or any other organization or group that advocates the overthrow of the United States by force or violence, so help me, God.”

They have made another mistake, fellow members, in that they did not include and do not propose to include the name of the Communist Party in the provision for discipline. It is quite difficult to prove that the Communist Party is an organization advocating the overthrow of the government of the United States by force or violence, or that any other organization has such a primary purpose, and so we eliminate the practical question of procedure and proof when we say, “If you are now or ever have been a member of the Communist Party, you are subject to disciplinary proceedings by the Bar,” and I therefore move you, Mr. President, that insofar as this report of the Committee is concerned, pertaining to the oath, that this Association here and now go on record as favoring the inclusion of the following phrase in the oath. “That I am not now and that I never have been a member of the Communist Party, or any other organization or group advocating the overthrow of the government of the United States by force or violence.”

And also that they include the name of the Communist Party in the provisions set forth in disciplining members of the Bar.

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BY PAUL P ASHLEY

I think there may be some impression that the report as passed in to the Supreme Court, which itself will finally determine the rule, omits a recommendation that there be that language included in the oath. So I would interpret the remarks of my friend who just preceded me.

Now, the sequence, gentlemen, is this: As of this moment, neither our rules pertaining to admissions nor our rules pertaining to discipline give the Board of Governors adequate assistance in facing situations where there is an applicant whom we have reason to believe is undesirable because of his communistic leanings, or in respect to discipline of an attorney whom we think has so conducted himself as to undermine our form of government.

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

Gentlemen, as of this moment our rules lack these aids.

The Committee has reported to you. With some humiliation I must admit that these drafts did not include a balancing provision in respect to discipline. The Committee suggested it should be there. The Committee suggested it should be omitted from the oath, as Mr. Shefelman has reported. The Board accepted the Committee's recommendation in respect to including it in the rules pertaining to discipline. The Board refused to follow the Committee's recommendation in respect to omitting any reference from the oath.

So as the record now stands, the Supreme Court now has before it the Board's recommendation that there be language in both places, subject, however, to this explanation. The Committee maintains that as a matter of draftsmanship it was better to omit the word "communism."

We lawyers, between us, have many situations where in substance we are not in agreement. For instance, on behalf of the lessor one of us

draws a lease, trying to give effect to the agreement we have in mind. On behalf of the lessee another of us thinks other language is more appropriate. Not for exhibitionism, or to build up time for which to charge our clients—but sincerely we battle in respect to language.

It is just a matter of draftsmanship, as I view it, provided the language is broad enough to include communist, or fascist, or the next party that comes up with the word “American” before it. The party that is really going to put us out is going to be a new name, and the first part of the name is going to be “American,” or something like that.

I think the Committee convinced the Board that as a matter of draftsmanship it would be better to leave out “communist.” I think it is better draftsmanship to have all-inclusive language—not name anyone because at this moment, this year, that one is opposing us in Korea, or elsewhere. If we were to include communist, also include fascist. If they were included, should we not include a number of others? If we have left out others, should we a year from now, or two years from now, amend the oath?

Tracy is standing. I can't compete with Tracy in eloquence. I do not consider him an egotist. I consider him considerably well informed, and it terrifies me he is going to follow me.

Your Board has recommended two things to the Supreme Court, designed to accomplish the various purposes Tracy and others have so eloquently recommended. We are not in a position of having recommended one and not the other.

The question is: What draftsmanship is the better draftsmanship to accomplish the purpose every man here has in mind?

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*Editor's Note:* At the conclusion of the foregoing discussion, the meeting voted in favor of including the following language in the attorney's oath. “That I am not now, and never have been, a member of the Communist Party, or any other organization or group advocating the overthrow of the government of the United States by force or violence.”

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## ADDRESS

BY CODY FOWLER

When I say that I am happy to be here and pleased that I should have been asked by your Association to say something at your convention, these are not just orthodox statements. I like the West. I like the western people. I lived many years in the Southwest, where, as here,