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Legal Profession - Standing for Admission - Standards Relating To Admission Require a Rational Connection With the Applicant's Fitness or Capacity to Practice Law; Investigation Into Moral Character To Be Limited To Determining Whether the Applicant Will Obstruct Justice or Act Unscrupulously As an Officer of the Court. *Hallinan v. Committee of Bar Examiners* (Calif. 1966)

Roy W. Paul Jr.

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LEGAL PROFESSION—STANDING FOR ADMISSION—

STANDARDS RELATING TO ADMISSION REQUIRE A RATIONAL CONNECTION WITH THE APPLICANT'S FITNESS OR CAPACITY TO PRACTICE LAW; INVESTIGATION INTO MORAL CHARACTER TO BE LIMITED TO DETERMINING WHETHER THE APPLICANT WILL OBSTRUCT JUSTICE OR ACT UNSCRUPULOUSLY AS AN OFFICER OF THE COURT. *Hallinan v. Committee of Bar Examiners* (Calif. 1966).

Terence Hallinan was refused certification for admission to practice law in California by the Committee of Bar Examiners upon a finding that he was not of "good moral character."¹ The Committee's determination was based on Hallinan's beliefs and activities in connection with "civil disobedience" and, in particular, several misdemeanor convictions arising from these activities.² In addition, Hallinan's past record included several fistfights and other conduct which the Committee held indicated a disregard for the law and a propensity for violence.³ The Committee's decision was made after lengthy hearings

¹ "To be certified to the Supreme Court for admission and a license to practice law, a person . . . shall: . . . (c) Be of good moral character." CALIF. BUS. & PROF. CODE, § 6060(c) (West 1962).

² The reasons given by the Committee in refusing to certify Hallinan were: "(1) [H]e now has and has demonstrated over a period of many years, a continuing willingness and tendency, without reasonable justification, to employ against the persons and property of others unreasonable force and the threat thereof; (2) he has recently and continuously over a period of years shown disrespect and willful disregard for the rights, property, and physical safety of others; (3) in his improper and sometimes criminal use of force, the threat of force, and forceful resistance to arrest, and in his knowing disobedience of the order of a Court, he has shown a disrespect for the law and judicial officers, which exceeds the bounds of his acknowledged right to hold and espouse, to advocate, advertise, and to participate in mass demonstrations to achieve the acceptance of any social, political or philosophical views or beliefs in a peaceful and non-violent manner; (4) the record as a whole establishes that he lacks candor and truthfulness; and (5) the evidence in the record tending to show that he has good moral character is outweighed by the evidence that he is not entitled to the high regard and confidence of the public and that he does not possess those qualities of character and moral fitness requisite to admission to practice law in California." *Hallinan v. Committee of Bar Examiners*, 65 Adv. Cal. 485, 488-89 n.2, 421 P.2d 76, 79 n.2, 55 Cal. Rptr. 228, 231 n.2 (1966).

The first activity which resulted in an arrest occurred in England in 1960 during a peace demonstration led by Bertrand Russell, when Hallinan was arrested and formally charged with "blocking a footpath." He pleaded *nolo contendere* and paid a fine of £1. In 1963, he spent the summer assisting the registration of Negro voters in Mississippi. He was arrested twice during that period, for loitering and for littering public areas, but neither instance resulted in a conviction. In San Francisco, he was arrested six times in connection with civil-rights activities, four of the charges being dismissed and two resulting in misdemeanor convictions. All of these demonstrations involved picketing or "sit-ins" at various business establishments alleged to have followed discriminatory hiring practices. 65 Adv. Cal. 493-95, 421 P.2d 82-84, 55 Cal. Rptr. 234-36.

³ Evidence was introduced by the State Bar which indicated that Hallinan had been

before a three-man subcommittee and a review of the entire record of the previous hearings by the full Committee in which additional evidence was produced.⁴ Before the Committee ended its proceedings, Hallinan petitioned the California Supreme Court to order the Committee to make its decision immediately and halt any further inquiry into the question of his admission to the bar. Hallinan also requested that the Supreme Court review the proceedings before the Committee and admit him to practice. In the meantime, the Committee formally made its recommendation that he not be admitted.

The California Supreme Court, in admitting Hallinan to the California Bar *held*: (1) Standards relating to admission to the bar must have a rational connection with an applicant's fitness or capacity to practice law; (2) the investigation into moral character should be limited to determining whether the applicant, if admitted, will obstruct justice or otherwise act unscrupulously as an officer of the Court; (3) the beliefs and activities of Hallinan with respect to "civil disobedience" did not constitute grounds to exclude him from the practice of law because of a lack of "good moral character"; and, (4) there is no simple guide to determine the moral character required for the practice of law—the particular circumstances must be examined carefully to determine their relevance to the practice of law. *Hallinan v. Committee of Bar Examiners*, 65 Adv. Cal. 485, 421 P.2d 76, 55 Cal. Rptr. 228 (1966).

The *Hallinan* court was concerned primarily with whether certain acts of "civil disobedience," and perhaps more important, Hallinan's beliefs concerning "civil disobedience" indicated a lack of "good

involved in nine fistfights during the period from 1953 to 1964. The court disregarded the six prior to 1959 as "youthful indiscretions." The remaining three occurred while Hallinan was a law student. 65 Adv. Cal. 503, 421 P.2d 89, 55 Cal. Rptr. 241.

⁴ The Committee's findings included the following:

(1) [A]pplicant exhibits a disrespect for an organized system based upon the rule of law and reserves to himself the right to decide when, how and which laws shall be obeyed.

(a) It is Applicant's belief that a violation of law is justified if done for the purpose of forcing negotiations designed to what he believes to be a desirable goal. . . .

(b) It is Applicant's belief that a violation of an injunction or of a law is justified, even though such violation is not in an attempt to establish the unconstitutionality of the particular law violated, if the violator has determined in his own mind that such violation will tend to bring about what he considers to be a desirable result. . . .

(c) It is Applicant's belief that it is proper and necessary to take action outside of the existing framework of laws if such action will tend to accomplish a change in a law which he considers to be so anachronistic as to be unable to fit into the existing political situation in this country and if he believes that enough people agree with him. . . .

Petition for Review, Mandate, and Injunction, Exhibit C, at 3, 65 Adv. Cal. 485, 421 P.2d 76, 55 Cal. Rptr. 228.

moral character" which would provide a rational basis for exclusion from the practice of law in California. This appears to be the first case in which this issue has been raised in connection with admission to the bar. A difficulty in resolving this issue is that "moral character" should not be determined entirely by a subjective judgment.⁵ For the court to resolve the problem, it was necessary to establish a standard of the moral character required to practice law and to establish what evidence is necessary under the standard to establish the moral character of the applicant.

In passing the State Bar Act and its subsequent amendments,⁶ the legislature set up standards regulating the practice of law, but regulation of the bar has remained a judicial function.⁷ As the *Hallinan* court pointed out:

Virtually all of the admission and disciplinary cases in which we have upheld decisions of the State Bar to refuse to admit applicants or to disbar, suspend or otherwise censure members of the bar have

⁵ For a discussion of some of the problems which arise in evaluating "moral character" based on political beliefs, see Brown & Fassett, *Loyalty Tests for Admission to the Bar*, 20 U. CHI. L. REV. 480 (1953).

⁶ For a discussion of the practice prior to the State Bar Act, see McMurray, *Seventy-five Years of California Jurisprudence*, 13 CALIF. L. REV. 445 (1925). As the need for an expert bar was recognized, a Committee of Bar Examiners was established to examine the applicant's qualifications and make recommendations to the California Supreme Court concerning his admission. CAL. BUS. & PROF. CODE § 6064 (West 1962). Upon certification by the Committee, the applicant is admitted by order of the California Supreme Court. The court will ordinarily follow the recommendation of the Committee, but the findings of the Bar Examiners are not binding on the court.

Regarding the examination into knowledge of the law, only the fact that an applicant was prevented from a fair opportunity to pass the examination will provide grounds for review. But whether his failure is for lack of knowledge of law or lack of good moral character, an unsuccessful applicant may seek a review by the California Supreme Court. See CAL. BUS. & PROF. CODE § 6066 (West 1962); CAL. RULES OF COURT, RULE 69; see also *In re Admission to Practice Law*, 1 Cal. 2d 61, 33 P.2d 829 (1934); RULES REGULATING ADMISSION TO PRACTICE LAW, RULE X. Cases in which the court has followed an adverse recommendation by the State Bar include *In re Garland*, 219 Cal. 661, 28 P.2d 354 (1934) (failure to disclose prior misconduct including criminal acts and illegal practice of law); *Spears v. State Bar*, 211 Cal. 183, 294 P. 697 (1930) (where insufficient proof was offered to sustain burden or overturn recommendation); *Bailey v. State Bar*, 209 Cal. 476, 288 P. 433 (1930) (concealment of prior disbarment at time of admission upheld as grounds for disbarment). However, the court overruled the adverse recommendation by the State Bar in *In re Stepsay*, 15 Cal. 2d 71, 98 P.2d 489 (1940); *In re Jung*, 13 Cal. 2d 199, 88 P.2d 679 (1939); *Warbasse v. State Bar*, 219 Cal. 566, 28 P.2d 19 (1933); *State Bar v. Rollinson*, 213 Cal. 36, 1 P.2d 428 (1931); *In re McCue*, 211 Cal. 57, 293 P. 47 (1930); *Harrington v. State Bar*, 210 Cal. 514, 292 P. 456 (1930).

⁷ *Brydonjack v. State Bar*, 208 Cal. 439, 281 P. 1018, (1929). "Admission to practice is almost without exception conceded everywhere to be the exercise of a judicial function . . ." *Id.* at 443, 281 P. at 1020. "[T]he legislature may put reasonable restrictions upon constitutional functions of the courts provided they do not defeat or materially impair the exercise of those functions." *Id.* at 444, 281 P. at 1020. See also *In re Lavine*, 2 Cal. 2d 324, 41 P.2d 161 (1935). In this respect, regulation of attorneys is unlike that of other professions.

involved acts which bear upon the individual's manifest dishonesty and thereby provide a reasonable basis for the conclusion that the applicant or attorney cannot be relied upon to fulfill the moral obligations incumbent upon members of the legal profession.⁸

Previous cases have usually involved advocacy of violent overthrow of the Government or membership in the Communist Party or other group legislatively defined to advocate such a policy.⁹ The subcommittee expressly found that Hallinan was not a member of such a group.¹⁰

The facts in *Hallinan* were not in issue. There was no attempt by Hallinan to conceal his activities, although he did try to justify his civil rights activities on moral and political grounds. But on the particular facts, the Committee's analysis may have been: (1) Hallinan had violated the law, although in a nonviolent manner; (2) he also displayed a propensity for violence; (3) therefore, he *might* violate the law in a violent fashion. In reviewing the record, however, the California Supreme Court found that "petitioner explicitly repudiated violent civil disobedience and that all of the demonstrations in which he engaged were peaceful. The sincerity of petitioner's beliefs in non-violent civil disobedience and his high motivation in this regard are unchallenged by respondent."¹¹

"Good moral character" has been held to be "an absence of proven conduct or acts" which have been historically considered as manifestations of "moral turpitude."¹² A common definition of

⁸ 65 Adv. Cal. at 510, 421 P.2d at 93, 55 Cal. Rptr. at 245.

⁹ *E.g.*, *Konigsberg v. State Bar*, 366 U.S. 36 (1961); *Konigsberg v. State Bar*, 353 U.S. 252 (1957); *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957). Membership in the Communist Party or other group advocating violent overthrow of the government is now a separate ground for exclusion in California. CAL. BUS. & PROF. CODE, § 6064.1 (West 1962); *Konigsberg v. State Bar*, 52 Cal. 2d 769, 344 P.2d (1959); *In re Anastaplo*, 3 Ill. 2d 471, 121 N.E.2d 826 (1954).

¹⁰ *Report, Findings, Conclusions, and Recommendations of Bar Examiners' Hearing Subcommittee in the matter of Terence Hallinan*. 65 Adv. Cal. 485, 421 P.2d 76, 55 Cal. Rptr. 228.

¹¹ 65 Adv. Cal. at 499, 421 P.2d at 86, 55 Cal. Rptr. at 238.

¹² *See Konigsberg v. State Bar*, 353 U.S. 252, 263 (1957); *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957) ("moral turpitude" used as the relevant criterion in construing a New Mexico statute requiring a showing of good moral character); *see also In re Meyerson*, 190 Md. 671, 59 A.2d 489 (1948).

The *Konigsberg* Court, in discussing the meaning of "good moral character," said:

[T]he term, by itself, is unusually ambiguous. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law. 353 U.S. at 263.

"moral turpitude" is "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man."¹³ Such a definition does not add much certainty, but does indicate that the conduct in question must be of an *extreme* nature. In this regard, one is usually concerned with crimes involving "moral turpitude" which have traditionally centered around fraudulent or deceitful practices. Crimes affecting the administration of justice have been added to that same class.¹⁴ In addition, some definitions of moral turpitude include acts involving the violation of a rule of public policy or morals, and all offenses which affect the administration of justice.¹⁵

Although "moral turpitude" may be indicated by violations of the law, it is clear that not all violations of statutes, ordinances or even public morals give reason to question one's moral character. Minor offenses committed in the heat of anger or mental infirmity have been held not to be sufficient grounds for disbarment;¹⁶ the same result has been reached regarding bad manners, bad language,¹⁷ and even sexual immorality.¹⁸ But when conduct renders an attorney unable to carry on his responsibility as a member of the legal profession, it can be the basis of disciplinary action, and if great enough, possible disbarment.¹⁹ It is to anticipate and prevent such situations from occurring that standards for admission have been established.

¹³ *In re Alkow*, 64 Cal. 2d 838, 841, 415 P.2d 800, 802, 51 Cal. Rptr. 912, 914 (1966); *In re Boyd*, 48 Cal. 2d 69, 70, 307 P.2d 625, 626 (1957); *In re Craig*, 12 Cal. 2d 93, 97, 82 P.2d 422, 444 (1938); *In re Henry*, 15 Idaho 755, 757, 99 P. 1054, 1055 (1909); *Trades & General Ins. Co. v. Russell*, 99 S.W.2d 1079, 1084 (Texas 1936); 14 AM. JUR., *Criminal Law* § 5 (1938); 27A WORDS AND PHRASES, *Moral Turpitude* 192-93. See also definitions in *In re McAllister*, 14 Cal. 2d 602, 95 P.2d 932, (1939); *In re Hatch*, 10 Cal. 2d 147, 73 P.2d 885 (1937); *Marsh v. State Bar*, 210 Cal. 303, 291 P. 583 (1930).

¹⁴ "Moral turpitude" has included all crimes embraced in the Roman concept of *crimen falsi*, *Huff v. Anderson*, 212 Ga. 32, 90 S.E.2d 329 (1955). *Crimen falsi* is defined in DIGEST 48.10; BLACK'S LAW DICTIONARY 446 (4th ed. 1951).

¹⁵ See *Matzenbaugh v. People*, 194 Ill. 108, 62 N.E. 546 (1901), which characterizes as *crimen falsi* only those offenses involving dishonesty which injuriously affect the administration of public justice.

¹⁶ *In re Rothrock*, 16 Cal. 2d 449, 106 P.2d 907 (1940); see *Baker v. Miller*, 236 Ind. 20, 138 N.E.2d 145 (1955).

¹⁷ *People v. Palmer*, 61 Ill. 255, 256 (1871). "The court is not . . . a censor of morals, so as to require it to pronounce upon the style of manners and conversation which becomes an honorable member of the legal profession."

¹⁸ *People ex rel. Black v. Smith*, 290 Ill. 241, 124 N.E. 807 (1919) (frequenting disorderly house not sufficient in itself, but may be relevant in connection with other evidence).

¹⁹ *In re Washington*, 82 Kan. 829, 109 P. 700 (1910). It is not necessary that misconduct be in professional activities. See e.g., *Ex parte Wall*, 107 U.S. 265 (1882)

The relevance of a conviction in determining moral character has often been considered. Conviction of a crime involving moral turpitude is usually given great weight, even to the extent of giving conclusive weight to a conviction to establish moral turpitude.²⁰ Yet it is not the conviction itself which is important, but the nature of the acts which resulted in the conviction.²¹ Even when an indictment does not result in a conviction, the circumstances may still provide a basis for a determination of bad character.²²

The existence of misconduct prior to admission should not, by itself, be grounds for disbarment after one has been admitted to practice,²³ unless it had been deliberately concealed at the time of admission, in which case the concealment itself would be grounds for disbarment.²⁴ What is important is to determine the relationship that conduct has upon the fitness of an attorney to practice law. In discussing Hallinan's past conduct, the court declared: "Although petitioner's past behavior may not be praiseworthy it does not reflect upon his honesty and veracity nor does it show him unfit for the proper discharge of the duties of an attorney."²⁵ A determination concerning admission to practice law should not be used to impose additional punishment for misconduct.

(participation in lynching); *In re Gorsuch*, 76 S.D. 191, 195, 75 N.W.2d 644, 648 (1956), where the court said:

This does not mean that the Court has the function or right to regulate the morals, habits or private lives of lawyers, who like other citizens are free to act and to be responsible for their acts, but when the morals, habits or conduct of a lawyer demonstrate unfitness to practice law or adversely affect the proper administration of justice, then the Court may have the duty to suspend or revoke the privilege to practice law in order to protect the public.

See also *In re Hilton*, 48 Utah 172, 158 P. 691 (1916).

²⁰ In some cases the conviction is prima facie evidence of moral turpitude. *State v. O'Leary*, 207 Wis. 297, 241 N.W. 621 (1932); *In re Solicitor*, 61 L.T.R. (n.s.) 842 (Q.B. 1842), *aff'd* (1889) 37 W.L.R. 598 (C.A.); see also *In re Weare* (1893) 2 Q.B. (Eng.) 439.

²¹ *People ex rel. Chicago Bar Ass'n v. Meyerovitz*, 278 Ill. 356, 116 N.E. 189 (1917); *People ex rel. Deneen v. Gilmore*, 214 Ill. 569, 73 N.E. 735 (1905); *cf. Deneen v. Coleman*, 210 Ill. 79, 71 N.E. 693 (1904).

²² In *State ex rel. Guille v. Chapman*, 11 Ohio 430 (1842), a verdict in a civil action for libel finding that an attorney had committed theft was given the same effect as a conviction in determining his fitness to practice law, although it was not a conviction for theft.

²³ *In re Lowenthal*, 61 Cal. 122 (1882) (California Supreme Court order admitting to practice held to be in the nature of a judgment on requisite qualifications; therefore, attack cannot be made on previous character absent fraudulent concealment).

²⁴ *Bailey v. State Bar*, 209 Cal. 476, 288 P.433 (1930). (Conduct having a direct bearing on the present character of the individual, even though it was not considered at the time of admission, might still be admissible evidence to determine the present character. See *Gould v. State*, 99 Fla. 662, 127 So. 309 (1930).

²⁵ 65 Adv. Cal. at 510, 421 P.2d at 94, 55 Cal. Rptr. at 246.

To the extent that acts of civil disobedience involve violations of the law it is altogether necessary and proper that the violators be punished. But criminal prosecution, not exclusion from the bar, is the appropriate means of punishing such offenders.²⁶

The principal question the *Hallinan* court had to decide was whether Hallinan's past acts demonstrated that he, as an attorney, would obstruct the administration of justice. It was to this problem that Hallinan's convictions were relevant.

Although any intentional violation of the law *might* be condemned, the *Hallinan* court noted that "every intentional violation is not, ipso facto, grounds for excluding an individual from membership in the legal profession."²⁷ It is not always clear what the law actually is, for there are many instances in which ". . . something which looks like law, which has passed through the legislature, which is printed where laws are printed, is being violated."²⁸ Yet the activity may not have been in violation of a law, since that which appeared to be law was not in fact a law. Even if a law were broken, since law and morality are not always synonymous, a crime may not involve moral unfitness.

Were it not for intentional violations of the law, the law would cease to develop. An intentional violation of the law can be considered in several aspects. When violation is made in the belief that the law is not valid, it is difficult to say categorically that such a violation displays a lack of moral character, as few would label the patriots of the American Revolution persons of "bad moral character" because of their violations of what was at that time the law.

In any case, it is clear that the courts have been unwilling to place restraints on an individual's beliefs and acts which do not relate to his fitness to practice law, even when the beliefs and acts may lead one to counsel that constitutionally questionable laws shall not be obeyed. For it is the activity and its result which establishes bad moral character. Lawyers have long pursued activities involving politics and social reform, and, within wide limits, have been allowed to speak as freely as any other citizen.²⁹ It is only when these

²⁶ 65 Adv. Cal. at 500, 421 P.2d at 87, 55 Cal. Rptr. at 239; see also *People ex rel. Chicago Bar Ass'n. v. Meyerovitz*, 278 Ill. 356, 116 N.E. 189 (1917). The distinction between punishment and determining qualifications is discussed in *Ex parte Garland*, 71 U.S. (4 Wall) 333 (1867).

²⁷ 65 Adv. Cal. at 498, 421 P.2d at 85, 55 Cal. Rptr. at 237.

²⁸ Black, *The Problem of the Compatibility of Civil Disobedience with American Institutions of Government*, 43 TEXAS L. REV. 492, 499 (1965).

²⁹ *In re Gorsuch*, 76 S.D. 191, 75 N.W.2d 644 (1956). "But for the right to speak freely, there is responsibility for abuse of the right. . . . [I]n the case of a lawyer an

activities affect a lawyer's fitness to practice law that a serious question is raised. Unpopular beliefs regarding theories of government and economics, as long as they have not been expressed in such a way as to lead others to violate laws, should never be used to preclude one from practicing law.³⁰ The United States Supreme Court has said:

One with innocent motives, who honestly believes a law is unconstitutional and, therefore, not obligatory, may well counsel that the law shall not be obeyed; that its command shall be resisted until a court shall have held it valid³¹

Unpatriotic conduct which is not treason, nor contrary to the responsibilities of any attorney, is not grounds for disbarment.³² But public advocacy of sabotage and criminal syndicalism as a means of effecting social and industrial reform,³³ and acts of sedition, particularly when there is a violation of a statute,³⁴ have been used to exclude persons from practice.

The United States Supreme Court, in reviewing a refusal to admit an applicant to practice law in California because of his refusal to answer questions which were alleged to relate to his loyalty, stated:

We recognize the importance of leaving States free to select their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner nor in such a way as to impinge on the freedom of political expression or association. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to the society and the bar itself that lawyers be unintimidated—free to think, speak and act as members of an Independent Bar.³⁵

The question of moral character may not be as much one of absolute loyalty to an existing government as it is of complete loyalty to the process of law. Seeking change in the law or the system of political

abuse of the right of free speech may be some index of his character or fitness to be a lawyer." *Id.* at 196, 75 N.W.2d at 648.

³⁰ "With . . . beliefs and opinions . . . the courts have nothing to do, unless . . . [they] were uttered under circumstances and in a manner calculated to lead others to violate and disregard existing laws." *In re Margolis*, 269 Pa. 206, 207, 112 A. 478, 479 (1921).

³¹ *Keegan v. United States*, 325 U.S. 478, 493-94 (1945).

³² *In re Clifton*, 33 Idaho 614, 196 P. 670 (1921).

³³ *Ex parte Wall*, 107 U.S. (17 Otto) 265 (1882) (active participation in a lynching); *State ex rel. McLaughlin v. Graves*, 73 Ore. 331, 144 P. 484 (1914) (mob violence); *In re Smith*, 133 Wash. 145, 233 P. 288 (1925) (public advocacy of sabotage and criminal syndicalism).

³⁴ *In re Kerl*, 32 Idaho 737, 188 P. 40 (1920).

³⁵ *Konigsberg v. State Bar*, 353 U.S. 252 (1957).

government is not precluded, for our system has been wisely provided with built-in methods for change; but certain types of change are not compatible with the law. In discussing a conviction under the Smith Act,³⁶ the Supreme Court in *Dennis v. United States*,³⁷ felt that its purpose "is to protect existing Government, not from change by peaceful, lawful and constitutional means, but from change by violence, revolution and terrorism."³⁸ The *Hallinan* court emphasized the nonviolent beliefs of Hallinan, pointing out that all of the civil rights demonstrations in which he participated were peaceful.³⁹

Having eliminated the question of "violence," it seems clear that beliefs or activities involving nonviolent civil disobedience are not in themselves conclusive evidence of a lack of "good moral character," even if they involve a violation of the law. It is in this regard that additional evidence concerning Hallinan's fights was introduced by the Committee for the purpose of showing a disregard by Hallinan for the law and "a propensity for violence." The court dismissed as "youthful indiscretions," the fights which occurred before Hallinan was 22 years of age. Concerning the three fights which occurred while Hallinan was a student in law school, the court held:

[E]ven if we ignore the evidence of provocation or other extenuating circumstances . . . [these fights] do not demonstrate such, "baseness, vileness and depravity" as to amount to moral turpitude.

³⁶ 18 U.S.C. § 2385 (1964), formerly 54 Stat. 670 (1940).

³⁷ *Dennis v. United States*, 341 U.S. 494 (1951).

³⁸ *Id.* at 501; see also *Veterans of the Abraham Lincoln Brigade v. S.A.C.B.*, 380 U.S. 513 (1965); *American Committee for Protection of Foreign Born v. S.A.C.B.*, 380 U.S. 503 (1965); *Rowoldt v. Perfetto*, 355 U.S. 115 (1957); *Yates v. United States*, 354 U.S. 298 (1957); *Communist Party of the United States v. S.A.C.B.*, 367 U.S. 1 (1961).

Even violence or rebellion may not be evidence of bad moral character. In *Ex parte Garland*, 71 U.S. (4 Wall) 333 (1866), one who had fought for the Confederacy was allowed to practice. An opposite position is seen in *In re Summers*, 325 U.S. 561, 572 (1954), where an applicant was refused admission to the Illinois bar because of his unwillingness to resort to violence to serve in the Armed Forces. The United State Supreme Court held that the decision of the Illinois Supreme Court, that the belief in non-violence made it impossible to take the oath required of an attorney, did not violate the fourteenth amendment, and made an analogy to the federal requirement that an alien who will not pledge military service cannot be admitted to citizenship. See also *United States v. Schwimmer*, 279 U.S. 644 (1929).

In a strong dissent to the *Summers* case, Mr. Justice Black said:

The conclusion seems to me inescapable that if Illinois can bar this petitioner from the practice of law it can bar every person from every public occupation solely because he believes in non-resistance rather than in force. For a lawyer is no more subject to call for military duty than a plumber, a highway worker, a Secretary of State, or a prison chaplain. 325 U.S. at 575.

³⁹ 65 Adv. Cal. at 499, 421 P.2d at 86, 55 Cal. Rptr. at 238.

The nature of these acts, moreover, does not bear a direct relationship to petitioner's fitness to practice law.⁴⁰

While there are limits even to fundamental constitutional rights,⁴¹ conduct and beliefs which are not of the level of "moral turpitude" cannot be used to exclude one from the legal profession unless it is clearly shown that they demonstrate unfitness to practice. Past conduct may be of little or no significance, especially when it is in the distant past.⁴² It may have been true that Hallinan, in the past, had a "propensity for violence." However, the court was impressed with the fact that since Hallinan had become active in the civil rights movement,

[H]is peaceful conduct in situations fraught with tension which might be expected to provoke to violence an individual so disposed is some indication that petitioner has, in fact, overcome such a propensity.⁴³

The importance of *Hallinan* may only be that the court did not hold, as a matter of law, that convictions for what may have been intentional violations of the law resulting from participation in civil-disobedience activities show a "lack of moral character." On the other hand, neither has the court condoned such activity. What it has done is to stress the importance of conduct and its relationship to the practice of law. Subjectivity can never be eliminated in making a prediction of *future* behavior, but the court has indicated that where there is a question of reasonable doubt, it must be resolved in favor of the accused. Thus, a final determination regarding exclusion from practice must show its relevance to the practice of law. In this changing

⁴⁰ *Id.* at 510, 421 P.2d at 93, 55 Cal. Rptr. at 245.

Why should we have any kind of requirements for admission to practice? The only justification for such requirements lies in the public interest and the legal profession has from time immemorial been looked upon as affected with a public interest in the highest sense of that term. . . .

Kirkwood, *Trends in Requirements for Admission to the Bar*, 7 CALIF. S. BAR. J. 80, 85 (1932).

⁴¹ "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." *Schenk v. United States*, 249 U.S. 47, 52 (1919).

⁴² In *Deneen v. Coleman*, the Illinois Supreme Court, discussing the relevance of a prior conviction, declared:

Thirteen years had elapsed between the time of conviction and the time of application for admission to this bar, and to hold, as an abstract proposition of law, that an error once made is to forever damn the man who makes it, is a thing we are not disposed to do. The opportunity and the hope held out to all men to repent and correct their ways, if they have ever been wrong, are the only possible incentives the law can know that can work the reformation of men who have gone wrong.

210 Ill. 79, 71 N.E. 693 (1904).

⁴³ 65 Adv. Cal. at 511, 421 P.2d at 94, 55 Cal. Rptr. at 246.

society, it is important to periodically reexamine the standards governing the practice of law, not to lessen the duties and responsibilities of the lawyer to his client and to society, but to allow lawyers to actively participate in a changing society. If limits to a lawyer's freedom are to be imposed, as they must, these should be based on more than *unpopular* opinions and activities.

ROY W. PAUL, JR.