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4 September 3, 1952

4 Thomas G. Finucane,
4 Chairman, Board of Immigration Appeals.

4 Ross L. Malone, Jr.,
4 Deputy Attorney General.

4 Admission of attorneys, who are alleged Communists, to practice
4 before the Board of Immigration Appeals and the Immigration Service.

This is in response to your memorandum of July 15, 1952, to former Deputy Attorney General Vanech, on the above-captioned subject, arising out of the pending application of Morton Leitson, of Flint, Michigan, for admission to practice before the Immigration and Naturalization Service and the Board of Immigration Appeals. You indicate that Mr. Leitson is a member of the bar of Michigan and of his county bar association, in good standing; but that you have confidential information to the effect that Leitson was and probably still is a member of the Communist Party; and that the Immigration and Naturalization Service has asked the Board to submit to the Deputy Attorney General the question whether attorneys who are known or thought to be members of the Communist Party ought to be admitted to practice in immigration matters before the Service and the Board. You further point out that the problem has been taken up on two prior occasions with former Deputy Attorney General Peyton Ford and that the conclusion was reached on those occasions not to undertake to deny admission to attorneys, on the ground of membership or alleged membership in the Communist Party. K

It is your view that if admission to practice before the Service and Board is to be denied because of the alleged Communist affiliations of an attorney, who is in good standing at the bar of his state, it will be necessary to revise the current regulations governing admission and to afford the attorney an opportunity to refute the charge of membership in the Communist Party, which would likely include the holding of a hearing and divulging information which is of a confidential character. For this purpose, you have included a suggestion made on a previous occasion for a change in regulations, which was not adopted.

The basic licensing of attorneys is done by the states. Both the federal courts and the federal administrative agencies rest qualification for admission of lawyers to practice upon their admission as attorneys or counselors in state or territorial courts. The current regulations governing practice before the Service and the Board is itself a good illustration of this reliance upon state licensing -

10 "Admission to practice shall be limited to persons who
7 are citizens of the United States, who are of good moral

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character, and who are attorneys in good standing in the court or courts in which they are licensed to practice . . . " (8 C.F.R. 95.3).

Likewise, the rules of the United States Supreme Court (Rule 2, para. 1, as amended November 18, 1946, Federal Code Annotated, Rules, p. 62) and of the several courts of appeals and district courts are in similar terms. While most of these rules include reference to good moral and professional character, some, such as the rule of the Court of Appeals for the First Circuit, say nothing regarding good character and rely solely on admission to the bar of other courts (C.A. 1, Rule 7, para. 1, as amended November 1, 1948, Federal Code Annotated, Rules, p. 84).

So far as I am aware, none of the rules of the federal courts and federal administrative agencies purport to exclude a known or alleged Communist as such. As a matter of fact, our attention has been called to an instance in 1951 in which the Supreme Court of the United States refused to receive or consider evidence that an applicant for admission to the bar of that court was a Communist. To my knowledge, the matter is not officially recorded, but the information was supplied by the office of the clerk of the court. The applicant, Maurice Braverman, a Baltimore lawyer, was admitted to the bar of the court. He was since convicted, early this year, for violation of the Smith Act.

In view of the basic licensing procedure by the states, upon which both the federal courts and the federal administrative agencies depend and rely in the admission of attorneys to practice, my view is that the subject of revising the character and morality requirements to include the further factor of membership in the Communist Party is a matter that ought to be left primarily to the states, until and unless there is manifest evidence of the failure of the states to deal adequately with their responsibility. Moreover, as you have pointed out, the administrative difficulties standing in the way of enforcement of a revised rule are considerable. You are no doubt referring to the fact that this Department has continuously resisted disclosure of FBI confidential information, and specifically in this kind of case. Confirming that position, I attach for your further information a copy of a letter from former Attorney General McGrath to the Chief Justice of the Oregon Supreme Court, written as recently as January 16, 1952, in which the Attorney General reiterated the reasons why it was against the public interest for him to direct the FBI to assist that court and its board of bar examiners to determine whether an applicant for admission to the Oregon bar had communist affiliations. The letter was written with the knowledge and upon the advice of the FBI. It must be assumed in these kinds of cases that we will not have the benefit of public confessions and that proof must be produced publicly. Hence, we should be slow to overturn a rule and practice concerning confidential information and files which this Department and its FBI has regarded as highly important.

Likewise, there are complex questions of law which require exploration before we embark upon any such program. For example, the proposal for amending the regulations includes a test oath, which may need study in the light of such cases as Ex parte Garland, 4 Wall. (71 U.S.) 333; Cummings v. Missouri, 4 Wall. (71 U.S.) 277; and United States v. Lovett, 328 U.S. 303, as compared with American Communications Association v. Douds, 339 U.S. 382; Garner v. City of Los Angeles, 341 U.S. 716; and Gerende v. City of Baltimore, 341 U.S. 56; and perhaps in the light of some of the statements in Dennis v. United States, 341 U.S. 494.

A further consideration is the justifiable criticism that, since we look to the courts and primarily the state courts for the control of standards of admissions of attorneys, our initiation and conduct of a program involving additional moral qualifications for lawyers may be an impingement by the executive upon a judicial function. Several divisions of this Department have already expressed their disapproval of legislative interference in the admission of persons to the practice of law before the federal courts (the proposal was S. Res. 92, 82d Cong.); the same criticism, though perhaps to a lesser extent, can be leveled at executive branch interference when the added requirements are not related to special skills or experience peculiar to the practice of the administrative agency.

It is well known, without detailing the instances, that where some few lawyers have proved to be unprincipled or even criminal in their dealings, both federal and state courts and the ethics committees of the bar have had at their command sufficient means to effect disbarment or punishment. While these instances in recent years have included a number of lawyers thought to be Communists, the courts have refrained from resting disciplinary measures on grounds of the offenders' political affiliations.

Similarly, without inviting controversy over delicate constitutional balances in fields of freedom for political thought and beliefs, your existing regulations provide amply for the discipline and disbarment of those persons admitted to immigration practice who commit unethical or wrongful acts or who are disbarred from practice in the courts. 8 C.F.R. 95.7, 95.8.

For the foregoing reasons, and in the absence of compelling reasons for change in the regulations at the present time, I would not be inclined to recommend alteration of your present rules of admission. However, please feel free to raise the issue again if there should be any change in circumstances.

Attachment