

Supreme Court of the United States

OCTOBER TERM, 1970

Supreme Court, U. S.

OCT 22 1970

In the Matter of:

Docket No. 15

----- X
SARA BAIRD, :
 :
 :
 Petitioner :
 :
 vs. :
 :
 STATE BAR OF ARIZONA, :
 :
 Respondent :
 :
----- X

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Place Washington D. C.

Date October 14, 1970

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4 SARA BAIRD, Petitioner :

5 vs. :

No. 15

6 STATE BAR OF ARIZONA, Respondent :
7 - - - - -X

8 Washington, D. C.

9 October 14, 1970

10 The above-entitled matter came on for reargument
11 at 1:40 p.m.

12 BEFORE:

13 WARREN E. BURGER, Chief Justice
14 HUGO L. BLACK, Associate Justice
15 WILLIAM O. DOUGLAS, Associate Justice
16 JOHN M. HARLAN, Associate Justice
17 WILLIAM J. BRENNAN, JR., Associate Justice
18 POTTER STEWART, Associate Justice
19 BYRON R. WHITE, Associate Justice
20 THURGOOD MARSHALL, Associate Justice
21 HARRY A. BLACKMUN, Associate Justice

22 APPEARANCES:

23 PETER D. BAIRD, Esq.
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Counsel for Respondent

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: The next case on for argument is Baird against the State of Arizona, Number 15.

Mr. Baird, you may proceed whenever you are ready.

ARGUMENT OF PETER D. BAIRD, ESQ.

ON BEHALF OF PETITIONER

MR. BAIRD: Mr. Chief Justice, may it please the Court: This case is on writ of certiorari to the Arizona Supreme Court. It involves refusal to admit Sara Baird to the practice of law.

Sara Baird, the petitioner in this case, has graduated from Stanford Law School, she has passed the bar examination, and there is no evidence whatsoever that she fails or lacks to have good moral character.

And the exclusion of her, or the refusal to process her application, stems entirely from the Questionnaire and Affidavit submitted to the applicants to practice law in Arizona.

There are two questions on that Questionnaire and Affidavit that are involved in this case.

Question 25 requests the bar applicant to list all organizations, associations and clubs of which "you are or have been a member since attaining the age of 16 years."

Petitioner complied with this request and did list the organizations, as best she could recall, and at the last

1 argument of this case, the record was supplemented to show that
2 that list.

3 Question 27, however, is the one, that petitioner did
4 not answer, and that asks "Are you now or have you ever been a
5 member of the Communist Party or any organization that advo-
6 cates overthrow of the United States Government by force or
7 violence?"

8 C Q That is sort of a catch-all question, isn't it?

9 A Indeed it is, Mr. Chief Justice. On its face,
10 it requests the applicant to make some sort of judgement about
11 the organizations which he has listed in response to question
12 25. And it is supplemented in the record by the bar committee
13 that the express purpose of this question is to seek out un-
14 orthodox political belief, that the bar committee has told us,
15 and it is in the record, that the basic hypothesis for this
16 question is that one who believes in the overthrow of the
17 Government cannot practice law in Arizona.

18 The question is framed so that if a yes answer is gi-
19 ven to question 27, there will be triggered an investigation
20 and interrogation into the views and beliefs of the applicant.

21 And the committee promises, without equivocation,
22 that if indeed they found from that interrogation and investi-
23 gation that the bar applicant believed in the overthrow of the
24 Government, that would be sufficient to exclude her from the
25 practice of law, or any other applicant.

1 Q Overthrow of the Government by force or violence.

2 A Yes. Belief alone, they are not requesting here

3 ---
4 Q But not overthrow of the Government alone.

5 A That is correct. Belief alone is sufficient for
6 the committee to exclude a bar applicant, and we submit that
7 our initial and most important basis for bringing our case here
8 that the Court below and the action of the committee violates
9 freedom of belief as guaranteed by the First Amendment.

10 We submit that the case of Speiser v. Randall in
11 which this Court wrote that, in that case where a veteran's
12 tax exemption was dependent upon the execution of an affidavit
13 claiming non-advocacy of overthrow of the Government, that this
14 Court said that that kind of taxing situation was frankly aimed
15 at the suppression of unpopular ideas.

16 Our case is even stronger. We have here the right to
17 practice law, we have here an express purpose to exclude one on
18 the basis of the views which they may hold which the committee
19 seeks to obtain.

20 Speiser v. Randall stands in an almost unbroken chain
21 of precedent according the essential right of freedom to believe
22 as one will the utmost protection.

23 Q Would you--I am not sure that this is relevant--
24 but would you extend that First Amendment to include a similar
25 application for a man seeking appointment as a policeman?

1 A Yes. I would say that if you get into the area
2 of political belief or a religious belief alone, that the po-
3 liceman would have the right to decline to answer that kind of
4 question.

5 Q And they must hire him as a policeman?

6 A If, in fact, the record discloses that he has
7 requisite moral character ---

8 Q Assuming he meets whatever the other qualifica-
9 tions are, you say he must be hired, under the First Amendment,
10 even though he believes in the overthrow of the Government by
11 force or violence?

12 A I would say that he has the same kind of rights
13 as a lawyer does not to disclose his political beliefs. I
14 don't know how the right to be a policeman may be characterized
15 differently from the right to practice law. This Court has
16 said that there is a right to practice law, and I am not aware
17 that it has made a similar pronouncement as to a right to be a
18 policeman.

19 But I would say that he would, in those circumstances,
20 have a right to hold his political beliefs inviolate. And as
21 to whether or not he has the express right to become a police-
22 man, I guess I am not entirely sure on that point, wholly
23 apart from Fifth Amendment considerations and that sort of
24 thing.

25 Q The First Amendment ought to be as good for

1 policemen as for lawyers, I should think.

2 A Yes, I should think so. And we take the view,
3 which is contrary to our opponent, that the First Amendment
4 should apply to teachers and to lawyers and to postmen and po-
5 licemen as well, as we feel it does in this case.

6 Q Suppose you are wrong in that breadth that you
7 assign. You say it necessarily follows that because a police-
8 man could not be hired, it follows that a man who is a lawyer
9 can be denied admission to the bar. Do you think they are
10 identical?

11 A No, I am not saying they are identical, and if
12 I am not correct in the breadth of my statements with respect
13 to the application of the First Amendment, I don't think the
14 fact that there is an exclusion of a police officer should
15 necessarily dictate the exclusion of a bar applicant.

16 The entire force of the chain of cases according to
17 freedom of belief the utmost protection, really stems from an
18 historical repugnance against the kind of test laws we have
19 had throughout the commonwealth for hundreds of years.

20 Q Did I understand you to say that it is your
21 submission that this Court has held that there is a right to
22 practice law?

23 A Yes.

24 Q In what case?

25 A In Ex Parte Garland, the Supreme Court there

1 facing the exclusion of a former Confederate officer because
2 he could not take the oath prescribed for him. It says that
3 the practice of law was a right, page, I believe, 379.

4 They said there is a right to practice law and that
5 it can only be deprived for misconduct, consisting of moral or
6 professional delinquency.

7 We submit the same exact proposition, that one's mis-
8 conduct should indeed be the basis for excluding one or dis-
9 barring one, but certainly not his political beliefs.

10 And we draw as a corollary of this argument that there
11 is no committee insofar as the practice of law is concerned
12 that should be able to say what beliefs lawyers can have and
13 what beliefs lawyers cannot have, because we feel that the ex-
14 pression of this Court in *West Virginia v. Barnette*, the
15 flag-salute case, that no official, high or petty, or institu-
16 tion can prescribe what is orthodox in matters of politics and
17 conscience and religion.

18 But even more than freedom of belief is involved in
19 this case. We submit also that there is another First Amendment
20 argument which would rest on freedom of association.

21 We have answered Question 25, we have given the list
22 of the names of the organizations, but the committee is not
23 content with that, and wishes to take the process a step further.

24 Q Has Mrs. Baird been refused admission to the
25 bar for refusal to answer this question?

1 A Yes, she has.

2 Q Which question specifically?

3 A Question 27.

4 Q It asks whether she has been a member of any or-
5 ganization that advocates?

6 A Yes, it calls for some kind of judgement on her
7 part, under the Smith Act perhaps.

8 Q It doesn't say anything about her beliefs. She
9 could be wholly objective about it.

10 Wouldn't your case be a lot stronger had she answered
11 Question 27?

12 A And then there was an exclusion because, if the
13 answer had been yes and if, then, they tried to interrogate her
14 about her beliefs--perhaps it would, but I think we would have
15 been surrendering a great deal in not only the First, but the
16 Fourteenth and perhaps even Fifth Amendment rights.

17 Q Well, you have an additional barrier, because
18 the committee can say, well, you haven't answered our question.

19 A Yes, but in *Konigsberg* and *Anastaplo*, the person
20 did not answer the question, and this Court felt it was right
21 enough for a decision to be rendered on whether or not it was
22 a final case and whether or not the issue had been presented,
23 but even apart from that, Mr. Justice Blackmun, this Court has
24 continuously, in this area of freedom of belief and associa-
25 tion, required the State to come forward with a compelling and

1 controlling State interest for an encroachment into the freedom
2 of association and belief area, and we submit that the purpose
3 advanced by the committee, and in this case is to seek out the
4 beliefs of the applicant, is neither controlling nor is it
5 compelling, and we submit that it is not even constitutional,
6 and we believe that in, for example, the area of congressional
7 investigation, this Court has held that you have a right and a
8 duty to comply with an investigatorial apparatus of the Govern-
9 ment to seek out facts, but you have a right to draw a line on
10 questions which seek to abridge First Amendment freedoms, such
11 as belief.

12 We submit that in this case, solely on the First
13 Amendment, there is the right to draw a line on a question
14 which is aimed for this purpose and for this purpose alone.

15 And in terms of the freedom of association, if in
16 fact it is a deterrent for a person to list the names of his
17 organizations, such as the teacher in *Shelton v. Tucker*, it
18 should be even more deterring to an individual not simply to
19 be able to list them but to have to characterize them under
20 the Smith Act, to be threatened with an interrogation or in-
21 vestigation into beliefs, if the answer is yes, and then to
22 be threatened with exclusion solely upon the beliefs of the
23 applicant.

24 We submit that this is in fact a deterrent and would
25 fall within the line of cases under *Shelton v. Tucker*.

1 Q Can you tell me again, Mr. Baird, if you did
2 before, the citation in which this Court has said that there is
3 a right to practice law?

4 A Ex Parte Garland. It is an old case, it is 1867.
5 We cite it on page 17 of our brief.

6 Q This is Mr. Garland who later became Attorney
7 General?

8 A That is correct. The two cases which apply very
9 much in this area are, of course, the Konigsberg and Anastaplo
10 decisions.

11 We submit that the line was drawn in both of those
12 cases with respect to freedom of belief.

13 Q If Mrs. Baird had answered 27, "not to my
14 knowledge," would that have been an acceptable answer?

15 A No, I do not think so, because it would have
16 been a sanction of the purpose of the committee, which was to
17 seek out the political beliefs of the applicant.

18 Q Do you know that an answer "not to my knowledge"
19 would have been deemed unacceptable?

20 A I think in the brief filed before this Court,
21 the committee has said that an "I don't know" answer would be
22 acceptable to them.

23 But if in fact the committee's need for data is so
24 strong, I don't understand how an "I don't know" answer could
25 be sufficient under the circumstances.

1 Q How did she answer Question 27?

2 A She did not answer Question 27, she entered the
3 words "not applicable."

4 Q Well, that is right. She didn't just leave it
5 blank, did she?

6 A That is correct.

7 Q What do you suppose she meant by "not applicable"?

8 A Well, that, it seems to me, was part of the re-
9 cord before the Arizona Supreme Court, that constitutionally
10 this question could not be asked of her and that an answer to
11 it is not required under the First, the Fourteenth, and the
12 Fifth Amendments, as was submitted below.

13 We contend that, under *Konigsberg* and *Anastaplo*,
14 Justice Harlan was careful, at least it seems to us he was
15 careful, in pointing out that *Speiser v. Randall* did not apply
16 to those cases because there was no intent to penalize political
17 belief in the *Konigsberg* case.

18 And we submit that that sharply distinguishes that
19 case from ours, because there is here, and the record is replete
20 with evidence, an attack on political belief.

21 Finally, we find that the decision below does violate
22 due process because, we submit, it is arbitrary in using a
23 question such as this, of this nature, for finding out the
24 political beliefs of the applicants, particularly where the
25 committee does not request the purpose for this as seeking out

1 conduct.

2 Q Why would it be arbitrary if they had a right
3 to ask it?

4 A Excuse me.

5 Q Why would it be arbitrary if they had a right
6 to ask the question under the law?

7 A If in fact they have a right to ask the question,
8 then I would say, and if I am wrong, then all of the points I
9 am presenting here in my brief, I guess in fact you could say
10 that it is not arbitrary, because I would lose on the points of
11 law that I am submitting to you.

12 It is my position that it is arbitrary to seek out
13 political beliefs, because it really does not have that close
14 a nexus or relationship with one's performance as a lawyer.

15 For example, take the ardent hard-core racist who,
16 in his mind, has never translated it into conduct, he dis-
17 believes in the equal protection clause, he disbelieves in
18 Brown v. Board of Education, he disbelieves in as many venal
19 thoughts as he possibly can. I submit that that man has a
20 right to practice law. He has the right to practice law just
21 as much as the person who has an abhorrent left-wing belief,
22 because it is the point made in Ex Parte Garland that you
23 judge a man by his conduct.

24 If in fact he translates his venal thoughts into
25 conduct that is repugnant to the United States Constitution and

1 the equal-protection clause, then he should be excluded at the
2 gate or he should be disbarred, but the mere holding of a be-
3 lief will by anybody's standards depend on their own subjective
4 point of view.

5 Q I can't see anything arbitrary about asking a
6 man a question allowed to be asked under the law.

7 A If I lose, Mr. Justice White, then it won't be
8 arbitrary, and they will be able to ask the question.

9 It is our further point that this has an intimidation
10 effect.

11 Q I may say that my questioning you about arbitrary
12 doesn't mean that I have no sympathy with the other part of
13 your argument.

14 A If there is in fact an intimidating effect, we
15 would submit that if the committee on examinations and admis-
16 sions can seek out the beliefs of the bar applicants, and if
17 in fact that can be a basis for their exclusions, then it seems
18 to us that there may well be an intimidating effect upon law-
19 yers to speak their minds, upon lawyers to join organizations
20 they wish, and perhaps even to represent unpopular and repudia-
21 ted points of view.

22 Q That argument, as I understand it, is based on
23 the First Amendment.

24 A That would be First, but we also feel that it
25 has a certain arbitrariness because it produces a result which

1 would be counterproductive to at least a maintenance of a free
2 bar which would be free to speak and to represent as they will.

3 Not free, however, to engage in bombing or misconduct,
4 but free to think and to act and to join insofar as the law
5 permits.

6 Q You keep emphasizing belief, Mr. Baird. As I
7 look at this question again, the question asks about the orga-
8 nizations which are dedicated to overthrowing the Government
9 by force or violence.

10 Now, do you reach a belief problem until you get,
11 first, an answer to the question?

12 A Yes.

13 Q You really reach the belief problem?

14 A You reach the belief problem. We say that it is
15 arguable on the face of the question that it calls for some
16 kind of belief about the organization. It is an arguable point.

17 But we reach the belief problem because, in the First
18 Amendment area, this Court has said to the States: You are in
19 the First Amendment area, come forth with the kind of compelling
20 and controlling State interests which you must have to proceed
21 in this First Amendment area.

22 And, in this case, the committee has come forward and
23 said our compelling and controlling State interest is to seek
24 out the beliefs of those who will answer that question yes,
25 those who we deem to be dangerous because of their beliefs.

1 And once the question has a purpose of that nature,
2 we feel that, under the First Amendment, that question need not
3 be asked.

4 In NAACP v. Button the question asked there was to
5 bring forth the membership list. The Court requested that the
6 purpose of that question be made clear and, upon examining that
7 purpose, this Court found that it was not sufficient in order
8 to permit an encroachment into the freedom of association area.

9 So we say that on the face of the question as well
10 as the clear record, supplemented by the committee on examina-
11 tions and admissions, we do reach the belief issue, and reach
12 it in a very significant way, because they promise to exclude
13 on the basis of belief.

14 Q Exclude or inquire further?

15 A Exclude. They are going to inquire further and
16 then they are going to exclude if in fact that belief is un-
17 acceptable to them. And we say that they do not have the power
18 to design and ask a question of bar applicants if the only
19 purpose they have is to get at the beliefs of the individual
20 applicants, because that is not part of their jurisdictional
21 domain and is not permissible under the First Amendment.

22 And there is a further issue in this case, and it
23 does involve the Fifth Amendment.

24 Question 27 calls for an incriminating answer. If
25 the answer given were yes, it would take the applicant directly

1 into the heartland of the Smith Act. It is our contention that
2 the invocation of the Fifth Amendment in this case does not
3 necessarily depend upon the answer given. Rather it hinges
4 upon the question and the nature of the question as a matter of
5 law.

6 If in fact one need not show an actual hazard before
7 invoking the Fifth Amendment in an area pervaded with criminal
8 statutes such as this, if in fact the innocent as well as the
9 guilty may claim the protection of the Fifth Amendment, as has
10 been said by this Court, and if in fact the good-faith invoca-
11 tion of the Fifth Amendment is, as this Court said in United
12 States v. Covington, usually one of law, then we submit that,
13 as a matter of law, one may read Question 27 and one may valid-
14 ly invoke the protection of the Fifth Amendment on the basis
15 of the question alone.

16 We contend that, logically, under the force of
17 Spevack v. Klein, one cannot exclude a bar applicant by refu-
18 sing to comply with something that has an incriminating effect.
19 There is no logical distinction between a disbarment proceeding
20 and an exclusion from the bar, and I think that point was made,
21 and validly so, by Mr. Justice Harlan in his dissent in that
22 case.

23 Q In other words, under this argument, you could
24 not ask an applicant whether he had committed grand larceny
25 or murder?

1 A Under this argument, that is correct. We, how-
2 ever, would answer a question that related to conduct.

3 Q The Fifth Amendment argument doesn't accept
4 conduct. In fact, it is a fortiori.

5 A That is true. Although we would not concede
6 that Spevack v. Klein does not apply to bar admissions, and
7 Spevack does have a logical import to it that would carry you
8 from the disbarment situation to the exclusion situation at the
9 door.

10 So, in conclusion, we submit that Sara Baird should
11 be made a lawyer and that the area of freedom of belief remain
12 inviolate.

13 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Baird.
14 Mr. Wilmer?

XXXXX15 ARGUMENT OF MARK WILMER, ESQ.

16 ON BEHALF OF RESPONDENT

17 MR. WILMER: May it please the Court: I would at
18 the outset, I think, make two observations, the first being
19 that the committee has no power to exclude anybody from the
20 practice of law in the State of Arizona, so please bear in mind
21 the fact that the Court has not yet abdicated its prerogatives
22 in that respect.

23 Q When you say the Court, do you refer to the
24 Supreme Court of the State of Arizona?

25 A I am referring to the committee. We were

1 advised by counsel that the committee had excluded Sara Baird
2 from admission to practice.

3 My only observation is that the Supreme Court of the
4 State of Arizona enjoys that prerogative and not this committee.

5 I think, to put this case in what I would consider to
6 be true perspective as to what is really at issue here, it
7 might be better first just to review the actual procedures in
8 the State of Arizona in relationship to the problem which is
9 before this Court.

10 We have filed, for the convenience of the Court,
11 copies of the printed rules adopted by our Supreme Court.
12 These rules are found in the --- Statutes in volume 17 in the
13 --- part, but, for the convenience of the Court, since these
14 are printed for all applicants, we have supplied the Clerk
15 with printed copies.

16 And these copies, as supplied, are those applicable
17 at the time of the controversy. There are certain amendments
18 indicated which had nothing to do with this matter. They
19 relate to fees and those matters that are not involved here.

20 So, for the purposes of this problem, this contro-
21 versy, the printed rules are appropriate and are authentic.

22 Q You printed appendix A as part of the ---

23 A No, your honor, I am speaking of a small pam-
24 phlet like this.

25 Q Yes, I have seen that. Do we have to look

1 through all that?

2 A No.

3 Q Is this the rule that governs?

4 A There are no rules in that, your honor. And
5 I will make specific reference to what I am speaking of.

6 I am referring to the responsibility and the func-
7 tions which a committee performs. I am referring to the prob-
8 lem that was before this committee, which caused this committee
9 to take the position which it did and which led to this con-
10 troversy.

11 For counsel, I am sure inadvertently, stated that
12 Sara Baird had been rejected for admission to the bar of the
13 State of Arizona. This is an inaccurate statement. This
14 matter is like Mohammed's coffin, suspended between heaven and
15 earth. The committee has made no recommendation to the Court
16 and the Court has made no ruling in the matter.

17 The rules first provide, with respect to the obliga-
18 tions of the committee, no applicant will be examined until his
19 application has been considered and acted upon, and permission
20 granted, by the committee to take such examination. No per-
21 mission will be granted until it has been established to the
22 satisfaction of the committee that--and then follows a number
23 of things that the Supreme Court requires of the committee
24 that they affirmatively find before they permit the applicant
25 to sit for the examination.

1 The rules provide that the applicant must file an af-
2 fidavit and questionnaire, and that, Mr. Justice Black, is the
3 instrument that is printed as the appendix, and it is also con-
4 tained in this little pamphlet which I have distributed.

5 The rule--and I am reading from page 5 of the pam-
6 phlet--asks -- questionnaire and affidavit, fully answered
7 under oath, is filed, the committee shall make such investiga-
8 tion as it deems proper for the purposes of determining whether
9 or not the applicant possesses the qualifications specified in
10 Rule 6, such investigation ordinarily not required within 30
11 days, and includes the right to require a personal interview.

12 A character committee, as well as an examinations
13 committee, is faced, at least it seems to the members of the
14 committee, with a very onerous responsibility, the responsibi-
15 lity of stating to the Supreme Court of whatever State it sits
16 in, that this particular man or woman does in fact possess not
17 only the learning qualifications, the knowledge of the law, but
18 also possesses the character which can be safely entrusted with
19 the many responsibilities and privileges and prerogatives
20 attached to the office of attorney.

21 Now, I would like also to emphasize to the Court,
22 that this question of due process and this question of arbit-
23 rary treatment is put to rest so far as the State of Arizona
24 is concerned.

25 The Court will know that I am referring to page 9

1 of this pamphlet, that our Supreme Court has spelled out, with
2 reasonable meticulous detail, what must be done before the
3 committee may reject, what it must do if it does reject an ap-
4 plicant.

5 The rules provide for two types of proceedings, the
6 informal proceeding and an informal proceeding. This is before
7 the committee can consider whether or not an applicant can be
8 recommended for admission.

9 If the record upon which the committee is going to
10 act is one which has been supplied by the applicant, if it is
11 a record which either represents what he has said filed with
12 the committee or what is on the face of the record that the
13 committee is going to act on, the committee may then supplement
14 that by informal conferences with the applicant.

15 But the rule specifically says that, if you are going
16 to supplement that record upon which you are going to deny this
17 man permission to practice, you must do it in writing, if he
18 asks for it. If it is an interview, it must be a stenographic
19 and reported interview, it must be filed with the applicant's
20 file.

21 The other rule says that, if you are going to deny
22 his admission--I beg your pardon--if you are going to recommend
23 against his admission, you then must put in writing and in his
24 file the specific reasons why you are denying, recommending
25 against admission, and that must be available for consideration

1 by the Court.

2 Q As I glance over these, they appear to have to
3 do with permission to take the State bar examination.

4 A That is correct.

5 Q Well, this petitioner has taken the State bar
6 examination.

7 A May I come to that in a moment? That is in a
8 sense true, but not entirely true. I will do that immediately.

9 The rules provide that we may not permit an applicant
10 to sit for a bar exam, but, for many years, by tacit approval
11 of the Supreme Court, an applicant is permitted, conditionally,
12 to take the bar exam. The applicant signs a statement stating
13 that she understands it is conditionally and that if the file
14 is not cleared, the grade will not be completed and the appli-
15 cant will not be recommended.

16 In other words, with a six-months' lag, if you have
17 a small tag-end that has not been cleared up, if you have, as
18 in this case, it would appear, maybe an oversight, you don't
19 deny that applicant the right to sit for the bar exam and say
20 you have to wait six months to sit again. You say you can take
21 it conditionally upon your file being cleared and your being
22 recommended to the Supreme Court for admission.

23 And in this case, as is reflected either in the prin-
24 ted record or in the record which has come up from the Arizona
25 Supreme Court, Sara Baird sat conditionally because her file had

1 not been cleared.

2 Now, there is no point in quibbling about it, but
3 tentative grading of Sara Baird's paper showed that she did a
4 good job. She is entitled, on the basis of the tentative ex-
5 amination, to be admitted, on the basis of her learning in the
6 law.

7 The committee follows the practice of holding a for-
8 mal session --- all grades are released and clearing all files.
9 And if they are not clear and the grades are not finally ap-
10 proved, then the applicant is not recommended to the Supreme
11 Court. That is the situation we have here.

12 Q This is sort of the reverse to what they do in
13 most States, isn't it? You have the committee on character
14 and fitness in effect before the person has taken the bar
15 examination. What happens if they flunk? Does all your work
16 go for nought?

17 A Theoretically, your honor, we should not let
18 them take the bar exam until they have been cleared. Theore-
19 tically, under the rules ---

20 Q You may have cleared them, all right, but maybe
21 they didn't get enough of a mark to pass the bar examination.

22 A Before they sit for the bar exam, they are sup-
23 posed to be cleared. Before an applicant is permitted to sit
24 to write the bar exam, under our rules, that applicant's file
25 should be cleared and the committee prepared to recommend

1 that applicant for admission to the Supreme Court, if they pass
2 the bar exam. In other States, I know, they have separate com-
3 mittees--well, I am not really familiar enough to comment.

4 Q In this case, you said it had been worked out
5 informally by the Supreme Court and by your committee that they
6 do take the examinations without being cleared in fact, and
7 that they sign some sort of a letter, did you say?

8 A I said this, your honor, that because of the
9 fact that we give examinations only twice a year, that the
10 committee has taken the prerogative and the Court has, with
11 knowledge of it, no objection, that if there is some tag-end
12 of the file, there is something the file has not been cleared,
13 or sometime the national conference is slow in getting back
14 their reports, the applicant is permitted to write the bar
15 examination conditionally, that condition being that you are
16 not going to be recommended and your grades are not going to be
17 finally approved, unless your file is cleared.

18 And in this case, the file was not cleared because
19 this one question was not answered.

20 Q I understand that. I thought you said that the
21 applicant signed some sort of a statement expressing his agree-
22 ment to that condition.

23 A I am not really sure that that is an accurate
24 statement or whether we write them a letter and say we are
25 going to let them take it conditionally, because your file has

1 not been cleared, but if your file is not cleared, you will not
2 get a complete processing examination. It is a favor to the
3 applicant. It does the Supreme Court and the committee no good,
4 because we could just as well say wait for another six months.
5 And so there is little basis for complaint of that being ar-
6 bitrary action.

7 Q Assuming that Mrs. Baird had answered this ques-
8 tion that she had been a member of the Communist Party, is
9 there anything in the record to show what the committee would
10 have done?

11 A Yes. Might I just say one other thing, that
12 the other procedure that the Supreme Court has required in-
13 volves where there is not, in the record, the basis for the
14 exclusion. In that case, a formal hearing is required, the
15 applicant is permitted to have a full examination of the mat-
16 ters that are involved, and a written decision must be made by
17 the committee stating the facts, on the basis of which denial
18 of the committee is recommended.

19 In the briefs and in the response which--I would like
20 to put this in perspective--on page 4 of the petition for writ
21 of certiorari, this comes to hand readily. This is the res-
22 ponse the committee made to the Supreme Court on the petition
23 for writ of certiorari.

24 Unless we are to conclude that one who truly and sin-
25 cerely believes in the overthrow of the United States

1 Government by force and violence is also qualified to practice
2 law in Arizona courts, then an answer to this question is indeed
3 appropriate.

4 The committee again emphasizes that a mere answer of
5 yes would not lead to an automatic rejection of the applicant.
6 It would lead to an investigation and interrogation as to whe-
7 ther or not the applicant presently entertains the view that a
8 violent overthrow of the United States Government is something
9 to be sought after.

10 Now, when counsel said that we are looking for poli-
11 tical belief, that is simply not the case. We are interested
12 in finding out if an applicant in fact believes it is proper
13 to take explosives into a courtroom, if it is proper for a law-
14 yer to go around with the notion of the present overthrow of
15 the Government, and that is what we are after here.

16 We are entirely indifferent to political beliefs in
17 the sense of those which are not those of an activist. And if
18 the political beliefs are those of violence and those of an ac-
19 tivist, yes, I would say to this Court, we would reject them and
20 recommend to the Court they be rejected.

21 If the answer to the inquiry was yes, it would lead to
22 an investigation and interrogation as to whether or not the ap-
23 plicant presently entertains the view of the violent overthrow
24 of the Government as something to be sought after.

25 If the answer to this inquiry was yes, that they are

1 in favor of violent overthrow of the Government now, we would
2 reject the applicant and recommend against his admission.

3 We go on to say, and this is the committee's official
4 position in this matter, I believe that Mrs. Baird should rea-
5 lize that even though she answered the question, that she had
6 at one time been a Communist or had otherwise associated with
7 organizations not regarded as friendly to the United States
8 Government, that would not necessarily cause us to reject her
9 application.

10 We would undoubtedly want to ask her some questions
11 as to her present beliefs. And as to the effect of such member-
12 ship on her qualifications to practice law, the committee would
13 again emphasize at this point that if the answer to Question 27
14 is yes, the committee will then endeavor to ascertain if Sara
15 Baird does adhere to the view that the overthrow of the Govern-
16 ment of this State and of the United States by force and vio-
17 lence would be a desirable objective, and that she would expect
18 to actively support such views.

19 Now, it seems to me, if it please the Court, that
20 this is sufficient to put this case in a posture, in a clear
21 context, of what is really involved in this case.

22 The committee has no resources, it depends upon what
23 is brought to its attention, it can only inquire by way of
24 interrogations such as this in trying to reach some conclusion.

25 When an applicant refuses to answer a question, an

1 applicant who is asking for a recommendation certifying to
2 their integrity and honesty and ability to practice law and
3 their willingness to uphold the institutions of this country
4 insofar as the practice requires, certainly the committee is
5 not in a position to sign their names to a certification that
6 this particular applicant is prepared to and should be admitted
7 to the practice of law. And that is what the issue is in this
8 case, whether or not a committee should be required to certify
9 to something which they don't know is true or not, and which
10 goes to the heart, at least we think, of the soundness of our
11 judicial system and its future usage in this country.

12 Now, if I may be excused for having raised my voice,
13 I will proceed.

14 The whole matter here, your honor, it seems to us, is
15 that the requirements which counsel says we have rejected and
16 which counsel says we are ignoring, of seeking after political
17 beliefs, of seeking out what this particular applicant is
18 thinking about, is wholly outside --- this record.

19 A committee can only bring in an applicant and say
20 now what do you believe about this, and then you have to make
21 a judgement factor--are they telling you the truth or not? Do
22 you think it is a good idea for explosives to be carried into
23 the courtroom, to be carried into the United States Congress
24 chambers? What do you think about these things? Many other
25 questions, and then you finally come to the conclusion that

1 this is someone who simply ideologically entertains certain
2 views you don't believe in, and that --- none of our business.

3 Q One problem I have is that the only people you
4 bring in for that in-depth investigation are those who answer
5 this question yes. You don't ask anybody else whether they are
6 going to bomb a courthouse.

7 A That is right, your honor.

8 Q So the only way you can get that in-depth inves-
9 tigation is to answer this question yes.

10 A That is correct, unless something else shapes
11 up in the answers, your honor. In other words, these files are
12 read carefully to see if there are any caveats that should be
13 seized upon and pursued.

14 Q Well, suppose the answer were "I don't know" or
15 "not to my knowledge"?

16 A I suspect that in this case, your honor, it
17 would have been ignored, the files closed, and the applicant
18 would have been approved.

19 Q That doesn't trigger an investigation?

20 A Nothing else in the files indicated that there
21 was anything else wrong with this lady, that she had any bad
22 background, that she belonged to any organizations that were
23 wrong, or anything else--wrong at least in the sense of what
24 we would think of as subversive or activist against the best
25 interests of the country.

1 So that if she had answered "I don't know" of any
2 organizations, that is acceptable. We have no right to have
3 her go out and make a search and investigation to determine
4 what are some of these things mean that she belonged to.

5 There is one other thing I would like to bring to
6 this Court's attention before I pass. If this is a conclusion
7 reached by the committee, that she is an activist in the
8 sense of believing in the overthrow of the Government by force
9 and violence, it will undoubtedly refuse to recommend Sara
10 Baird for admission to the bar of Arizona.

11 Now, should the conclusion be that her membership is
12 of a nominal character, and that she does not participate and
13 adhere to the views that a violent overthrow of our Government
14 is desirable, then the committee would have no legal basis for
15 refusing to recommend her for admission.

16 Now, that is the position of this committee before
17 the Supreme Court of Arizona and ---

18 Q What was that you were reading?

19 A I am reading from our response to the Order to
20 Show Cause, your honor, in the Arizona Supreme Court, that is
21 found in the petition for writ of certiorari as filed by the
22 petitioner here, and I was reading from page 5 of that petition.

23 Q Did they ask her that direct question?

24 A She was never interrogated, your honor.

25 Q Well, in the questionnaire, that she believed

1 in the overthrow of the Government by force and violence?

2 A That is the question she said not applicable.

3 Q I thought it was about belonging to an organiza-
4 tion.

5 A She had answered the organizations, your honor.
6 We had no right to ask her this 27 question, list the above,
7 the Communist Party, because we had already asked her, list
8 all the organizations of which you have been a member. So,
9 theoretically at least, she had answered that question.

10 The only question she refused to answer was Do you
11 belong to, or have you belonged to, an organization that be-
12 lieves in the overthrow of the United States Government by force
13 and violence?

14 Q Where is the question which asks if she believes
15 in the overthrow of the Government?

16 A Your honor, I said that had we pursued the mat-
17 ter and Mrs. Baird said yes, I do believe in it, or yes, I
18 have belonged to organizations, then she would have been asked
19 to appear before a committee, two or three members of the com-
20 mittee, and would have been asked questions about what in fact
21 do you believe. Do you believe in overthrowing it now?

22 Q That is what you have been arguing.

23 A That is what we would have done.

24 Q That is what you are emphasizing. Why didn't
25 they ask her that question?

1 A We never got the chance, your honor.

2 Q Well, they had a chance in the questionnaire.

3 A Well, I concede we might have done this. The
4 questionnaire has been used for many, many years. We might
5 have said "Do you believe in the overthrow?"

6 Q Well, that is what you asked her, whether she
7 believed in the overthrow of the Government?

8 A Well ---

9 Q That wasn't your question. You just asked her
10 if any of her organizations was of a certain kind?

11 A Right. And the entire purpose of that question,
12 if the answer is yes, is to then to interrogate the applicant
13 as to what in fact are your present feelings and beliefs and
14 intentions with respect to the overthrow of the Government by
15 violence. That is intended to trigger the committee.

16 Q Why did you have to have something to trigger
17 a question which you were really interested in? What you were
18 interested in was not whether she belonged to an organization,
19 but whether she believed in the overthrow of the Government by
20 force?

21 A Your honor, I concede that that might have been
22 a more direct approach.

23 Q Might have been, it would have been, wouldn't
24 it? That is the direct way to do it?

25 A Your honor, we can't do this over again.

1 Q I know you can't do it over, but you did not ask
2 that question.

3 A Well, your honor, we asked the question did the
4 applicant belong, or had she belonged to organizations which
5 believed in the overthrow of the Government by force and vio-
6 lence. That question was answered.

7 Q That would be a pretty difficult question for
8 anybody to answer who belonged to many organizations, wouldn't
9 it?

10 A I would say that, unquestionably, the applicant
11 could have said "I do not know, I cannot tell you," and we
12 might have asked her what do you belong to, but it doesn't seem
13 to me that the thrust of the question, your honor, is directed
14 to more than asking the applicant to put on the record what
15 her background is.

16 Q But the organizations, not her belief in whether
17 or not the Government should be overthrown.

18 A Well, your honor, I think the problem a committee
19 faces is this. You are only able to do so much investigation.
20 You ask questions that you think will hold up to you where you
21 should pursue the matter further.

22 Q It is not much trouble to add a question to a
23 long list of questions in a questionnaire: Do you believe in
24 the overthrow of the Government by force? That wouldn't have
25 bothered anybody, would it?

1 A In view of your honor's suggestions, I think
2 probably the questionnaire should be amended.

3 Q I would think so, if that is what you wanted to
4 find out.

5 A But that isn't the questionnaire we have here.
6 That is not the question which was asked.

7 Q It is not the question you have and therefore I
8 am asking you why you didn't have it if that is what you wanted
9 to know?

10 A Well, I am simply saying, your honor, that one
11 of the many things we would want to know under those circum-
12 stances would be that question, but what I am trying to empha-
13 size is that, if there is something in the file which leads
14 the committee to believe that there is a defect in the charac-
15 ter of the applicant, then the committee asks the applicant to
16 come over for an oral interview, and the interview is steno-
17 graphically reported and made a part of the record.

18 And if the committee takes any action based upon that,
19 it must be part of the record, so that in the course of an in-
20 terview the question I hold here, your honor, I suggest would
21 probably have been asked the applicant. And she would have
22 been given an opportunity to deny that she had any activist
23 views.

24 And, even if she had said yes and if she had come in
25 and showed the committee that she did not believe in the

1 present overthrow of the Government by force and violence,
2 that she would not participate, she did not intend to partici-
3 pate in that, if her views were simply like I belong to the
4 Elks, I belong to this, I belong to that, I don't really know
5 what they stand for, the committee would have said fine, you
6 are admitted, you are recommended for admission.

7 Q I would think that a committee that was that
8 anxious to find out about the organization to which the person
9 belonged, that the person couldn't guess --- the generous at-
10 titude of the committee which you have suggested.

11 A Well, your honor, I recognize the criticism of
12 the Court and I think it is something that should be considered,
13 but, unfortunately, this case cannot be run backward like you
14 do a replay on a football game.

15 Q It cannot be run backward, but you have to stand
16 on what you ask.

17 A We are trying to do that, your honor.

18 Q And you say that your interest in that is that
19 she might have given them some information that would authorize
20 them to ask another question which you could have asked with
21 all these?

22 A Well, your honor, if we are going to certify to
23 our Supreme Court that this particular applicant is qualified
24 mentally, morally and by character, we have to have the range
25 of a large number of questions. Otherwise, it is impossible

1 to make such a certification, if you can't ask these questions
2 of a person who wants the privilege of practicing law.

3 Q Well, if that is the central question, the
4 point of what you want, I cannot quite understand why anybody
5 would have failed to ask it.

6 Q Well, at least in this Konigsberg, too, you
7 had the sanction of the majority of this Court.

8 A That is right, your honor.

9 Q That was the majority then.

10 A That is correct, your honor. I would certainly
11 say that it seems to me that all of these arguments that have
12 been made, always --- the distinction attempted to be drawn,
13 comes squarely in the rule of this Court, is repeated so often,
14 it is almost like saying the Holy Mary or the Our Father to a
15 Catholic.

16 The question is simply where you have an interplay
17 of First Amendment rights and --- such as this lady presents,
18 it does then become a question of whether or not the State's
19 rights, the overwhelming needs of the State are such as to
20 require that a little old tiny answer be wanted from this wit-
21 ness.

22 In other words, whether or not the right of the
23 State to ascertain whether the character of a person who wants
24 to be admitted to practice law is such that he should be ad-
25 mitted, is of sufficient importance to require that that

1 particular person make a disclosure of their true beliefs and
2 positions and expectations if they are permitted to practice
3 law.

4 We think the answer should be that, in fact, the
5 State does have that right, and whatever minor--I say that ad-
6 visedly--minor exposure is required by this question is a
7 very small price for the applicant to pay who seeks the privi-
8 lege of a practicing attorney in the Courts of the State and
9 who should assume the responsibilities that go with that.

10 I will just say one thing in closing. I realize
11 that an answer to this question is not going to lead very much
12 in the way of catching anybody. But I do say that for this
13 Court to say to the young law students of our country, for this
14 Court to declare by a formal opinion, that an inquiry as to
15 whether the beliefs of those law students are such, their
16 beliefs are such that they are permitted to espouse a belief in
17 the overthrow of the Government by violence, the fact that this
18 Court was willing to say that we don't consider it of enough
19 importance what your beliefs are in this respect, what you are
20 actually thinking in this respect, to permit the committee to
21 inquire of it, seems to me would indeed be an invitation to the
22 young law students to think the practice of law really pretty
23 much like what is exemplified in some of our recent court
24 trials.

25 Q Mr. Baird, I have a couple of questions on the

1 application which I have been looking at, if you don't mind.

2 I notice that in the answer to Question 25 about the
3 organizations, it lists in turn a member of the Young Republi-
4 can Party, then the Young Democrat Party.

5 Now, in light of your arguments about this sensitivity
6 to inquiry into political associations, I wonder how that squares
7 with your argument on the failure to answer the other questions?
8 In Question 25, petitioner exhibited no concern about discussing
9 former or present political affiliations.

10 MR. BAIRD: I submit, Mr. Chief Justice, that by an-
11 swering Question 25 and trying to comply with the committee
12 with a question that, on its face, has no incriminating purpose
13 or no purpose to seek out some unorthodox point of view, or
14 something of that nature, that petitioner did consent to answer
15 that question to help the committee, if in fact it wanted help.

16 But Question 27 is not just a bland or general "list
17 your organizations." It has, written right across it, that
18 there is a right answer and a wrong answer, and that you are
19 supposed to make a judgement about these organizations you list
20 in Question 25 that you point out.

21 Q What is Question 25?

22 A Question 25 requested that the petitioner list
23 all organizations to which she has belonged since age 16. Then
24 she refused to answer the further question, Question 27, which
25 went into whether it is a Communist Party or any subversive

1 organization, and she says that, by answering Question 25, and
2 listing the names of organizations, she does not waive her
3 right to draw the line on a question that requires her to
4 characterize whether these happen to be subversive organiza-
5 tions, and she doesn't waive her right to resist a question
6 which, now we have been told, without any equivocation, is
7 aimed at seeking out heretical and unorthodox political belief.

8 Q Did that question actually call for her to tell
9 about the party she belonged to?

10 A Yes. Question 27 said "Are you now or have you
11 ever been a member of the Communist Party, or any organization
12 that advocates overthrow of the United States Government by
13 force or violence?"

14 Q Is that the one she answered by referring to
15 the Republican and Democratic Parties?

16 A No, sir.

17 Q Did the question actually call for her to give
18 the names of the parties? Because there are many people that
19 believe that both of those parties are subversive.

20 Q Let me go back, counsel. Suppose the question-
21 naire said "Are you a member of the Republican Party or the
22 Democrat Party, check one," I would think that you would get
23 a very hospitable reception in any Court to say that that is
24 not a question which they have any right to ask. I should
25 think on prior decisions.

1 But yet she had no difficulty answering and saying
2 that she was a member, at one time or another, of both major
3 parties. That doesn't really square with your protestations
4 about resistance to inquiry into political belief and political
5 association.

6 A It does to this extent, Mr. Chief Justice. If
7 the committee had come out and told us that the purpose for
8 Question 25 is the same purpose as for Question 27, and that
9 is to find out those who are members of the Republican Party
10 and to screen out those who hold Republican beliefs, I would
11 say she would have the same right to not answer that question
12 as she has to refuse to answer Question 27.

13 Question 27 is significantly different. It asks her
14 to make a judgement, under the Smith Act or under whatever kind
15 of substantive principles she must, to see whether these are
16 organizations which advocate the overthrow of the United States
17 Government by force and violence.

18 And on its face it has the suggestion that they are
19 after political belief. And that doubt was resolved when the
20 committee has now told us, indeed it is to find out what her
21 beliefs are.

22 Q Have they stated it is to find out what party
23 she belongs to?

24 A She listed in Question 25 ---

25 Q I understand she listed it, but I understood

1 also that the committee has admitted that they wanted to ask
2 her about whether she belonged to the Democratic or Republican
3 Party. Is that true?

4 A No, she has already listed that she belonged to
5 the Young Democrats and Young Republicans. What they want to
6 know is whether she believes in the overthrow of the Govern-
7 ment by force and violence.

8 And we submit that they could ask her Do you believe
9 in the equal-protection clause and Do you believe in complying
10 with the orders of this Court--the belief of a right-wing, of
11 a left-wing, of a middle-of-the-road, are really inviolate,
12 we submit.

13 And when the purpose is such, as it is here, to seek
14 out beliefs, to use that as a trigger to an inquiry into be-
15 liefs, then that question is on its face and as it has been
16 supplemented by the committee in the record, not worth an-
17 swering.

18 So we again submit that Sara Baird should practice
19 law.

20 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Baird,
21 Thank you, Mr. Wilmer. The case is submitted.

22 (Whereupon, at 2:40 p.m. the argument in the above-
23 entitled matter was concluded.)
24
25