

In the

# Supreme Court of the United States

Application of: )

FRE LE POOLE GRIFFITHS )  
FOR ADMISSION TO THE BAR, )

Appellant, )

ON APPEAL FROM THE STATE )  
OF CONNECTICUT )

No. 71-1336

RECEIVED  
SUPREME COURT, U.S.  
MARSHALL'S OFFICE  
JAN 16 2 18 PM '73

Washington, D. C.  
January 9, 1973

Pages 1 thru 48

Duplication or copying of this transcript  
by photographic, electrostatic or other  
facsimile means is prohibited under the  
order form agreement.

HOOVER REPORTING COMPANY, INC.

Official Reporters  
Washington, D. C.

546-6666

IN THE SUPREME COURT OF THE UNITED STATES

- - - - - X  
 IN RE APPLICATION OF :  
 FRE LE POOLE GRIFFITHS :  
 FOR ADMISSION TO THE BAR, :  
 APPELLANT, : No. 71-1336  
 On Appeal from the :  
 STATE OF CONNECTICUT :  
 - - - - - X

Washington, D. C.

Tuesday, January 9, 1973

The above-entitled matter came on for argument at 10:06 o'clock a.m.

BEFORE:

- WARREN E. BURGER, Chief Justice of the United States
- WILLIAM O. DOUGLAS, Associate Justice
- WILLIAM J. BRENNAN, JR., Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- THURGOOD MARSHALL, Associate Justice
- HARRY A. BLACKMUN, Associate Justice
- LEWIS F. POWELL, JR., Associate Justice
- WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

R. DAVID BROILES, ESQ., Hooper, Kerry, Chappell & Broiles, 200 Fort Worth Club Building, Fort Worth, Texas 76102 for the Appellant

GEORGE R. TIERNAN, ESQ., 215 Church Street, New Haven, Connecticut 06510, Attorney for the State Bar Examining Committee of Connecticut for the Appellee

C O N T E N T S

<u>ORAL ARGUMENT OF:</u>	<u>PAGE</u>
R. David Broiles, Esq., for the Appellant	3
George R. Tiernan, Esq., for the Appellee	30

- - -

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in No. 71-1336, the matter of the application of Griffiths for admission to the Bar.

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

ORAL ARGUMENT OF R. DAVID BROILES, ESQ.,

ON BEHALF OF THE APPELLANT

MR. BROILES: Mr. Chief Justice, and may it please the Court:

Fre Le Poole Griffiths was born in the Netherlands in 1940, emigrated to this country on a temporary visa in 1965, obtained the status of a permanent resident alien after she acquired work in this country in the State of New York in 1965. She continued to work in this country and was married in 1967 and moved to Washington, D. C.

After residing in Washington, D. C. approximately two years, she moved to New Haven, Connecticut where she was admitted to Yale Law School as a second-year law student. She completed her studies toward an LLB degree at Yale Law School and graduated from Yale Law School in June of 1969.

She has the equivalent of a B.A. in law from the University of Leiden in the Netherlands, an LLB in law from the Univeristy of Amsterdam in the Netherlands and an LLB in law from Yale University in New Haven, Connecticut.

She is, concededly in all respects, qualified for

admission to the bar examination in the State of Connecticut but for the fact that Rule 81 of the Superior Court rules of the State of Connecticut requires that all applicants for admission to the bar examination be citizens of the United States. Fre Griffiths is not a citizen of the United States and did not at the time of her application intend to become a citizen of the United States.

She was, at the time of her application, a resident within the residency requirements of the State of Connecticut for admission to the bar.

Q Does she give an indication of why she does not intend to become a citizen of the United States?

MR. BROILES: This is the fourth hearing that we have attended and you are the first person to ask. The record does not so indicate why she does not intend to become a citizen of the United States.

If you would like for me to give you the reason, I would discuss it --

Q Well, does the record show whether or not she intends to remain in the United States and particularly in Connecticut?

MR. BROILES: The record does not show whether she intends to remain in the United States or in the State of Connecticut. She was not asked that question. She, in fact, does intend to reside in the United States with her husband.

Q Indefinitely?

MR. BROILES: Yes. She does intend to reside in the United States indefinitely.

Q And clearly intends not to become a citizen.

MR. BROILES: She does not at this time intend to become a citizen. Her feeling is that after 25 years of living in Holland that she cannot give that up at this particular time. Dual citizenship is not a possibility. It would be as if we immigrated to Holland, say we married a Dutch citizen, and I was living in Holland and my wife was working there and in order to practice my profession as a lawyer, I was required to give up my citizenship in the United States.

My failure to do that -- and I would not give up my citizenship in the United States to be a Dutch citizen -- would not be because of any lack of loyalty to Holland, where I was a resident thereof, or because I intended to violate any laws of Holland or because I could not abide by the constitutional laws of Holland. It would be because of the feeling I had after having my family and resided in the United States for 25 years, that sort of personal feeling is what Mrs. Griffiths has and she doesn't feel at this time she could give up --

Q You are talking about "personal feeling," but one never knows about the future, about the relationships,

for example, between our country and Holland or any other nation.

MR. BROILES: No, there are contingencies --

Q And as long as that personal feeling of loyalty exists to the nation of which you are now a citizen, that, I suppose, is what Connecticut was trying to get at, wasn't it?

MR. BROILES: I think it is not what Connecticut is trying to get at. Connecticut -- people have personal feelings, for example, with regard to their citizenship in the state in the United States by virtue of the 14th Amendment, we have a dual citizenship to a state and to the United States if we are citizens of --

Q But international affairs, under our Constitution and all those matters, are turned over to the national government. The states don't have foreign policies with other nations. That is one of the reasons our Constitution was adopted.

MR. BROILES: That is correct.

Q So that is not --

MR. BROILES: Well, if you are asking, is there a contingency that she might go back to Holland, that contingency, in fact, exists, as much as the contingency that someone born in California who is admitted to practice in law in Connecticut might go back to California, that someone who is

a citizen of the United States might choose to renounce their United States citizenship and move to Israel. Someone might die. Someone might commit a breach of the canons of ethics as a member of the bar and be disqualified. There are all sorts of disabling contingencies that one can have. Certainly, one of them would be that she can go to Holland. That is a contingency, also, that her husband is subject to, that anyone would be subject to in leaving the United States.

I do not think it is what the State of Connecticut is getting at by requiring United States' citizenship of all members or applicants to the bar, though.

Q Mr. Broiles, to pursue your hypothetical, your moving to Holland and having a Dutch wife. As a member of the bar of some one of the states of the United States, do you think you would have the right to be a judge in Holland?

MR. BROILES: No, I would not have the right to be a judge in Holland, though it is interesting that my client, who is not a citizen of the United States and is a citizen of Holland would, on our research, have a right to be the Chief Justice of the United States Supreme Court.

Her research tells me that in Holland that is not the case. I tell you what my client tells me about Dutch law. I don't purport to know anything about it other than that. But we have not found any disabling provisions for an alien to be a United States district court judge or to be on the



Supreme Court of the United States of America.

Q According to the Constitution, they don't even need to be lawyers, do they?

MR. BROILES: There is no requirement that a Justice on the Supreme Court be a lawyer.

Q Mr. Broiles, following through with your hypothetical, just as a matter of curiosity, do you know whether you could be admitted to the bar of Holland?

MR. BROILES: According to my client, I could not.

Q Without being a Dutch citizen?

MR. BROILES: Without being a Dutch citizen.

Our research shows that there are very few countries that allow what one would call "reciprocity without the requirement of citizenship," one of the few being Japan and it is apparently possible in England but it is not possible, according to her, in Holland.

Q This is outside the record, but is your client still a resident in Connecticut?

MR. BROILES: She is presently living in Holland and is coming back Thursday and has the intention of practicing in Connecticut if this opinion is favorable to her. She went to Holland and had a child. She now has -- since the beginning of this lawsuit has had two children.

Q Is the case moot?

MR. BROILES: No, it is not, your Honor. There is

no residency requirement in the State of Connecticut. Rule 82 requires that you have an intention to reside in the State of Connecticut, which she has. At the time the case was brought up, of course she had been a resident of Connecticut for two years.

Q An intent to reside, that means an intent to live in Connecticut and indefinitely.

MR. BROILES: No, it does not, your Honor. It means an intent to reside in Connecticut so long as it takes to become a member of the bar. Once one has become a member of the bar, you need no longer have that intent.

Q Well, I know, but how can you have an intent -- what does residency mean in Connecticut?

MR. BROILES: Residency means living there.

Q Just being there?

MR. BROILES: Just being there. I, for example, am a member of the Connecticut Bar, a Commissioner of the Superior Court of the State of Connecticut as I stand here right now. I have not resided in the State of Connecticut for two years. I have been to Connecticut only twice in those two years, both times in connection with this lawsuit. I became a member of the bar in the State of Connecticut after my graduation from a law school in the State of Connecticut. No questions were asked me and no questions are required by the rules of the Superior Court of the

State of Connecticut that I intend to permanently reside in the State of Connecticut. Rule 82 says, "You must either reside in the State of Connecticut or intend to reside in the State of Connecticut." It does not require an intention to permanently reside in the State of Connecticut. I recently --

Q Residence means domiciled, then? In your --

MR. BROILES: I think residence does, in fact, mean that; that you at the time you make application for the admission to the bar, have the intention to reside. I take domicile to mean actually physically be present.

Q Well, also, domicile involves an intent to remain there indefinitely.

When I stay overnight in a hotel in New Haven, that doesn't make me a resident of New Haven.

MR. BROILES: It would not.

Q But if I have the intention of residing in Connecticut indefinitely, then I am, and domicile depends upon intent.

MR. BROILES: I think domicile depends upon --

Q Residence by intent.

MR. BROILES: Yes, I don't think the intent can reasonably be said to be indefinitely. The intent must be to stay there, having no particular plans to leave at this time to go someplace else, that this is where I am now. I am not definitely leaving someplace else.

Q That isn't leaving? Residency doesn't even mean that, then, in Connecticut?

MR. BROILES: Oh, I don't think so. I don't think --

Q So you could just move to Connecticut for long enough to take the exam and leave when --

MR. BROILES: Based on the rules of the State of Connecticut, that is quite correct. That is rule 82.

Q In other words, as mentioned in this case, somebody could come from Japan or Uganda or Nepal and just fill out the questionnaire and take the Connecticut bar exam?

MR. BROILES: No, that's a --

Q That is an absolute constitutional right to do so. Is that right?

MR. BROILES: No, that is absolutely not the position here.

Q Well, what --

MR. BROILES: One has to take -- one has to take -- one has to not only fill out the questionnaire but be interviewed by the bar committee.

Q All right, he is there long enough for an interview.

MR. BROILES: And the bar committee is satisfied as to his qualifications --

Q All right, he has gone along --

MR. BROILES: -- as to his residency in the State

of Connecticut and it seems clear under the rule of the State of Connecticut that he is admissable. This is what is constitutionally required.

Q Constitutionally required is what you say.

MR. BROILES: No, I am saying that that is what the rule of the State of Connecticut requires. I'm not saying that --

Q I know, but what the Constitution requires is that Connecticut must -- if a person is otherwise qualified -- must let him take the bar exam whether or not he is a citizen, so, as I say, he could come from India or Ceylon or Nepal or Uganda or Tanzania and be there long enough for an examination and to show he had gone to law school and Connecticut is constitutionally required to let him take the bar exam and if he passes it, to admit him to the bar of Connecticut and then he can leave the next night and never come back.

MR. BROILES: That is not my position --

Q Well, what is it, then?

MR. BROILES: -- and the Constitution does not require that. The original question asked by you was, with regard to this, was not the purpose to make sure that there was a residency -- the people were residents of the State of which they were lawyers and in fact, the State of Connecticut does not require more than what you have described. If the

State of Connecticut were to require a six-month residency requirement, that may well withstand the test of constitutionality. The New Mexico case which you recently denied cert on --

Q The issue in this case is whether or not Connecticut can constitutionally require that a person be a citizen.

MR. BROILES: That is correct.

Q And you have told us that it does not require that it doesn't require that he be domiciled in Connecticut. Therefore, since it doesn't, then your constitutional claim does come down, does it not, to what I suggest as my questions.

MR. BROILES: It does not.

Q Why not?

MR. BROILES: Connecticut could require, constitutionally, any --

Q It could, but it hasn't, you told us.

MR. BROILES: It has not. In this case it comes down to my client, on the Connecticut rule, qualified because she was, in fact, in the Connecticut opinion of the bar examiners, a resident under that rule. That has been so found and is not disputed, that Connecticut has no further requirements other than domicile or intention to be a resident in this case, yes, someone could come to Connecticut and stay there and if the board was satisfied with that--

Q He could come from Timbuktu and<sup>d</sup>so long as

he was there long enough for an interview and filled out question 82, said he was a resident of Connecticut and intended to stay there, then Connecticut wouldn't require that he be a citizen.

MR. BROILES: Connecticut could change its rule and require more by way of residency.

Q I thought your claim was that Connecticut could not constitutionally require that a person be a citizen.

MR. BROILES: It cannot require a citizen. It can require more by way of residency than it does.

Q But that is not the issue.

MR. BROILES: No, that is not the issue.

Q The issue in your case is whether or not the Constitution compels Connecticut to allow somebody to take its bar exam even though that person is not a citizen. Isn't that what this case is about?

MR. BROILES: That is what this case is about.

Q Isn't it true that under the existing Connecticut law, a man can catch a plane from Anchorage, Alaska, change in New York, go to New Haven, take the exam and will be admitted?

MR. BROILES: That is the way the rule is written, yes, your Honor. I did not write the rule nor do I say that --

Q And go right back to Anchorage?

MR. BROILES: That is the statement of the rule of

the State of Connecticut. That is not a constitutional requirement in this case.

Q And you mean to say that if somebody came from Canada and did the same thing, he would be entitled to the same discretion that the person from Anchorage had?

MR. BROILES: Yes, if the bar examiners were satisfied that he met the residency requirement under the facts that you state, he would be certified by the board to that. / That is a constitutional requirement, I deny.

Q Well, Mr. Broiles, basically what you are saying is that if this sort of pugacious presence is acceptable to the Connecticut bar examiners on the part of someone coming from Alaska, as Mr. Justice Marshall posits, it is a constitutional matter and must be acceptable in the same circumstances except that the person comes from Canada or Japan.

MR. BROILES: I am not sure I understand --- if you are saying that if he comes from Virginia, for example, to Connecticut and establishes residency under the minimal requirements of the State of Connecticut presently has, then he should be able to do that with a resident alien status from Canada. Yes, I am saying that, because that is the Connecticut rule, but I am not saying that this is a constitutional requirement. It is not. They could establish, I think, a longer residency requirement and stricter



standards for residency.

Q But in no event may they condition it on being a citizen.

MR. BROILES: In no event may they condition it on being a citizen.

Q Mr. Broiles, looking at the other side of this coin, what limitations, if any, are there on the length of time that the petitioner may remain in the United States as an alien?

MR. BROILES: With regard to constitutional considerations by bar examining committee?

Q No, no, present law. May an alien remain in the United States indefinitely?

MR. BROILES: I come in as a resident alien, a permanent resident alien, may reside in the United States indefinitely. She is subject to loss of that right on conditions that do not apply to citizens. If she is guilty of conduct that is proscribed by the federal statute, you know, habitual drunkenness -- that are spelled out in Immigration Naturalization -- she would be subject to deportation. They are certainly less stringent rules than one would expect of a bar association so that were she guilty of those same acts of misconduct, she should certainly be disbarred before she is deported but she is permanently -- has a right to be here under the present statutory scheme.

Q That is because she is married to a citizen, is it?

MR. BROILES: No, your Honor, she in fact got that status before she married a United States citizen. The -- by virtue of the fact of marrying a citizen, she achieves one thing that she did not have earlier and that is that she could become a United States citizen in three years rather than five years. But she got her permanent residency status prior to marrying a United States citizen.

I'd like to address myself to one inquiry raised by the brief of the State of Connecticut and that is that Graham versus Richardson does not apply in this case with regard to the standard that the classification based on alienage is subject to strict judicial scrutiny and that the State of Connecticut must show a compelling interest that this classification is necessary to meet.

This is stated on page five of the brief of the State of Connecticut where it is held that no inquiry beyond reasonableness is really needed. The reason that an alienage classification thus receives special scrutiny, namely the aliens nonparticipation in government, fails here because the nonparticipation is the purpose served by the classification.

As I understand that statement, the State of Connecticut is saying that Graham does not apply because of

the fact that the very exclusion of aliens from the process of government is the purpose of the rule. I would take it that what they mean is that if aliens had the right to vote, there would be no holding by this court that under the 14th Amendment all such classifications are subject to strict judicial scrutiny.

I would point out two examples where this is not the case. That is, that the franchise, or the right to vote, is not the purpose for the strict judicial scrutiny rule. Children cannot vote and to my knowledge, this Court has not said that by virtue thereof all classifications with regard to children are subject to the standard in Graham, a strict judicial scrutiny of the necessary and compelling interest.

Secondly, convicted felons cannot vote. I would be surprised if this court would seriously entertain an attack on the 1968 Crime Control Act gun provisions that govern felons possessions of registered and unregistered firearms on the grounds that they cannot vote.

The reason that classifications based on alienage are subject to strict judicial scrutiny is because of their analagous characteristic to racial classifications and classifications based on sex. The State of Connecticut has to show a compelling interest that is furthered by this classification and that the means are necessary for this --

Q Is it your position -- would your position

necessarily outlaw the exclusion of aliens from voting?

MR. BROILES: It would not necessarily outlaw it, but I would put it this way, your Honor. The question would be, could a prohibition, as all the states have, against voting by aliens, withstand the test of Graham that it meet a strict --

Q What do you think about that?

MR. BROILES: I think that it cannot. I think that under the holding in Graham, that the fact that an alien suffers the disabilities must pay the taxes, must be subject to all the laws of the government, will be a strong argument and that a strong constitutional --

Q And one that you think should prevail?

MR. BROILES: I think that on the facts as I understand it, it would prevail, yes, your Honor.

Q If the voting restrictions were to be sustained, I presume it might be connected with the idea of excluding aliens from the processes of government and decision-making?

MR. BROILES: I would think that that would be one reason.

Q And if that were to be sustained, you might be in more trouble. You would have a troublesome case here, wouldn't you?

MR. BROILES: I would say it would make my case

more troublesome to answer that, yes, your Honor.

Q It is a little strange to think that a classification that is made in the Constitution itself in many different provisions of the Constitution -- i.e., between citizens and other persons who are not citizens living in the United States, is that that classification is constitutionally suspect. The 14th Amendment itself makes that -- makes those classifications. The 15th Amendment gives the right of the franchise to citizens, not to persons.

The 14th Amendment gives some protections to citizens that it doesn't give to persons. It gives some to all persons and there are other places all through the Constitution where you find that distinction and isn't it a little odd, do you suppose, to be saying that that is a constitutionally suspect classification?

MR. BROILES: I'll have to answer that both with a yes and no by some examples, your Honor. I think there is a difference under -- even if the Court went so far as Mr. Justice White has said that these rules might compel it. There is still a difference between an alien and a citizen. The 14th Amendment talks about the privileges and immunities of citizenship. A citizen, by virtue of the 14th Amendment, has the privilege permanently to reside in the state as a citizen of that state, no matter what his conduct may be, and he is immune from the loss of his citizenship or from

deportation from the United States, no matter what his conduct may be or what we may think of him. That is not the case, that is not a privilege or immunity of an alien. An alien is entitled only to due process and equal protection of the laws.

Q Well, he is entitled to those same rights as against the state, isn't he?

MR. BROILES: Equal protection of the laws and due process? Or from deportation?

Q From what you just said, yes.

MR. BROILES: A state cannot take away -- he is entitled -- cannot have that taken away.

Q Yes, the state can't chase him out, anyway.

MR. BROILES: The state could not chase him out.

Now, there -- to --

Q The state protection extends only to citizens, the protection of the 15th Amendment extends only to citizens.

MR. BROILES: I realize the Constitution is full of distinctions. There are jobs --

Q Well, there is this distinction --

MR. BROILES: Yes?

Q Here is my point. There are many other distinctions, of course, as well, but precisely the one which you are now telling us is suspect under the Constitution.

MR. BROILES: Would have to meet the test that is

laid down in Graham of showing a compelling interest, yes. That is not the case that has to be decided here. What the record might show with regard to voting is another matter. What the record shows in this case with regard to attorneys is quite different.

This case is one step removed from the decision you must make in the case that was argued yesterday, Sugarman. We do not concede that our client has the status of a governmental official. She is not asking to be a member in the government. She is asking to be an attorney in the State of Connecticut.

The state seeks to analogize her to a governmental official. They seek to analogize her by virtue of the position that she would hold as an attorney in Connecticut, as a Commissioner of the Superior Court.

The state argues this on what they call a "self-evident proposition" that after all, the government of the State of Connecticut has a right to limit its positions to citizens thereof. In fact, the State of Connecticut does not limit positions for attorneys or Commissioners of Superior Courts to citizens of the State of Connecticut.

I am both an attorney in the State of Connecticut; I am a Commissioner in the Superior Court. I cannot vote in the State of Connecticut. I am not a resident of the State of Connecticut and yet I have all of these positions that

they seek to deny my client on the grounds that she is not a citizen. The difference is that the State of Connecticut does not compel citizenship of Connecticut. The State of Connecticut compels citizenship of the United States.

Q What oath does a practitioner in Connecticut take when - -?

MR. BAILES: The practitioner, as an attorney, takes the oath that he will not be guilty of any malice or take anybody's money without just representation or allow any fraud to be perpetrated on the court.

The significant oath is called the "oath of the Commissioner's Court," or the Superior Court, and that oath is, "I will uphold the Constitution of the United States and of the State of Connecticut so long as I remain a citizen thereof." That is the Connecticut statute, section --

Q "So long as I remain a citizen."

MR. BROILES: "So long as I remain a citizen thereof."

Q So the oath means nothing for an alien.

MR. BROILES: The oath certainly means something, yes. It is a symbol that is willing to do just precisely --

Q It only implies that as long as you are a citizen.

MR. BROILES: That is correct, your Honor. Obviously, I am no longer a citizen thereof and still have all



of the positions of an attorney. That does not make the oath meaningless when I take it.

Q Mrs. Griffiths would not, on your thesis, would not be a citizen at the time she was admitted, if she were admitted?

MR. BROILES: That is correct, sir.

Q So the oath would have just what meaning?

MR. BROILES: We have suggested that the very statute in question provides for an alternative oath and that she should be required to take the oath that she will uphold the Constitution of the United States and the State of Connecticut. The "so long as she remains a citizen thereof," obviously, she can't assert that. That can't be a meaningful part of the oath for someone who is not a citizen of either one.

In the alternative, if the State of Connecticut, which has not ruled on the possibility of a judge changing this oath and the power to administer alternative oaths, is vested in the judiciary -- if they will not change the oath, then under the argument, the oath would have to be unconstitutional because it would just be another way of requiring that all applicants for admission to the bar be citizens.

Q Is this form of oath in here somewhere?

MR. BROILES: Yes it is, your Honor. I'm sorry,

the form of the oath?

Q Yes.

MR. BROILES: Is in the supplemental -- is in the Appendix to the jurisdictional statement, page 44 of my --

Q Page 44?

MR. BROILES: Page 44. That is the oath of the attorney.

Q Thank you.

Q Is there any rule in Holland governing its citizens that they should not take oaths of loyalty to foreign governments or to foreign constitutions?

MR. BROILES: Yes, there is, your Honor. That is the problem. If my client takes the oath, as required under the Naturalization Act, she will lose her Dutch citizenship.

Q And so she -- yes, but what if she -- can she swear to support the Constitution of the United States consistent with the laws of Holland?

MR. BROILES: Yes, she can, your Honor and has stated throughout that she will take the oath --

Q Now, what is the restriction in Holland, that if you take an oath -- if you become a citizen of a foreign state, you lose your Dutch citizenship?

MR. BROILES: That is the only restriction.

Q You could nevertheless swear to support the Constitution of the United States?

MR. BROILES: And the State of Connecticut.

Q Now, if Holland and the United States were at war, now, I suppose by swearing to support the Constitution of the United States, might be treason in Holland?

MR. BROILES: If you are asking me to speculate on that, there would seem to be that possibility, yes.

Certainly, if this oath were taken after the declaration of war between the two countries, that would be a strong presumption, that it would be taken before --

Q So that her oath here, she prefers her Dutch citizenship to American citizenship and that is pretty clear.

MR. BROILES: That's true.

Q Which is -- that is clear in this case and in the time of war, her oath to support the Constitution would be somewhat less meaningful, I suppose.

MR. BROILES: I take it she would really have to make an election at that time, yes, your Honor. We are not saying the fact of alienage is totally irrelevant as a clue that the bar character committee can consider in passing on applications.

We are saying that across-the-board prohibition against aliens does not meet the standard laid down in Graham of furthering a compelling state interest.

Q Well, what does alienage have to do with

character?

MR. BROILES: We think that alienage has very little to do with character.

Q Well, yes, it is irrelevant to a person's character. I mean, a person could have been a patriotic German in World War II and had the finest character, but we were at war with that country and probably wouldn't have admitted somebody like that to our bar in between 1941 and 1945, but it has nothing to do with that person's character.

MR. BROILES: In so -- you know, I certainly tend to agree with you. I think alienage is totally irrelevant to admission to the bar. Obviously, four other states do, too.

Q Irrelevant to character. Now, the question is --

MR. BROILES: Well, I use the term "character" possibly broader than your Honor does in that it seems to me that under the decisions there are two general classifications, competence and character.

Now, in Baird and Law Students' Research Council, what you classified under character included inquiries into political beliefs and loyalty. Now, what we are obviously talking about here when we talk about citizenship and non-citizenship has something to do with allegiance, as Mr. Justice White has averred to numerous times. That is what I mean when I say it falls under character. We are talking about the types of things dealing with loyalty oaths,

which is precisely what this court has dealt with, with regard to admission to the bar. Can she conscientiously take that oath? The answer is yes. It has never been disputed that she can conscientiously take the oath.

Q Except that she knows and you know that in one contingency, the oaths will mean nothing.

MR. BROILES: She may elect United States' citizenship on that contingency. I don't know what she will do.

Q She may not, too.

MR. BROILES: Then, obviously, she will have her -- this government --

Q You will never know, though, till it is too late.

MR. BROILES: Do you know in advance what you might elect with regard to contingencies concerning wars in the United States? I don't think there are any of us can predict those contingencies forever in the future. I think that is a contingency not altogether unique to an alien or to a non-citizen.

Q Well, what Connecticut is saying is it has a right to do, is to eliminate people with the peculiar sort of contingency that your client might face.

MR. BROILES: That's right. That is what the State of Connecticut is saying and --

Q And it applies to everyone who happens to be

a resident alien.

MR. BROILES: It applies to all resident aliens.

Q It also applies to the resident alien who has decided that next year I am going to take out citizenship.

MR. BROILES: It applies to all -- yes, your Honor, it applies to one who has filed a declaration of intent to be a citizen.

Q Mr. Broiles, if the Graham case were not on the books, would you be here?

MR. BROILES: Yes, I would. In fact, this case was brought before any knowledge of the Graham case. It was filed in 1970, before Graham was decided by the three-judge court and Graham was decided by this court after it was appealed to the Connecticut Supreme Court. It follows from the Truax decision.

Q So that in your opinion, you don't have to rely on Graham?

MR. BROILES: I don't see any inconsistency between Truax and Graham and I think those are the main cases that interpret the 14th Amendment this way and I think the answer to your question is, you do not have to rely exclusively on Graham.

Truax was or was it not an equal protection case?

MR. BROILES: Truax was an equal protection case.

Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Tiernan.

ORAL ARGUMENT OF GEORGE R. TIERNAN, ESQ.,

ON BEHALF OF THE APPELLEE

MR. TIERNAN: Mr. Chief Justice and the members of this Court:

The issue really revolves about this point, that the applicant here is seeking admission to take the bar examination in Connecticut, hopefully with the final expectation of admission to the bar --

Q Would you raise your voice a little, Mr. Tiernan?

MR. TIERNAN: Yes. That she is seeking admission to the bar of the State of Connecticut on her own terms, to some degree at least. When she was examined before the committee, one of the committees which, of course, acts as an agency for the judicial department of the state, the courts of the state in the procedure for bar admission which, of course, appears in the Appendix. She was inquired of as to her residence and so forth, beginning at page 30. This is the transcript of the hearing before the Committee on Recommendations.

Now, when the question arrived as to her citizenship, she unequivocally stated that she was not and that she had no plans of becoming one.

The inquiry and interrogation stopped at that point

by the committee. The first question posed here by the bench satisfies me that that is a natural inquiry and, to my view, the first inquiry. Why didn't someone ask why?

Now, of course, the first and basic requirement of the Connecticut rules, which has been in effect for about a century, is, first, that he is a citizen of the United States.

Just prior to that, there is a statement, "To entitle an applicant to admission to the bar, except in section 12." One might very well say, well, what is that exception about?

The exception 12 merely refers to the admission on motion from other states by attorneys in the states of this country.

Q Would you tell me what requirements for citizenship of Connecticut are?

MR. TIERNAN: What do you mean by that, sir?

Q How do you become a citizen of the State of Connecticut?

MR. TIERNAN: No, the citizen of the United States, of course, in order to become a citizen -- when you become a citizen of the United States, of course, you become a citizen of a state, apparently of residence, where you are.

There is no specific -- every citizen of the United States is also a citizen of a state and owes allegiance to both, United States versus Lander 260 U.S. 377, a case decided here in 1922.



Q Well, so far as Connecticut requires, there is no requirement that he be a citizen of Connecticut, is there?

MR. TIERNAN: No.

Q It is simply a requirement that he be a citizen of the United States.

MR. TIERNAN: The only requirement is that he is a citizen of the United States and then the second question, which was --

Q Has to do with residence --

MR. TIERNAN: That is right, Mr. Justice Stewart, that is correct, that he is a resident of this state or intends to become such resident.

Now, of course, that question was really not followed at all. Our inquiry following the unqualified statement by this applicant before said committee that she had no intention of becoming a citizen, that was --

Q In the eyes of the law, if a man says, I intend to become a citizen, is he allowed to be admitted to the bar?

MR. TIERNAN: Well, of course, the rule doesn't limit it just to -- it says, an applicant to the admission to the bar and of course only one of the steps is the citizenship.

Now, the question of whether a persons says "I have filed declaration --"

Q No, no. My question is, he says, " I intend,"

the language of the rule says, "I intend to become a citizen." Would he be admitted?

MR. TIERNAN: That has not been decided, but I presume that he would not until he evidenced by some direct manifestation such filing declarations.

Q Well, he files his declaration. Would he be admitted?

MR. TIERNAN: That I could not answer under the specific rule, but I have --

Q Well, doesn't the rule say that?

MR. TIERNAN: As to residence, of course, that is right. One comprehends the other.

Q Right.

MR. TIERNAN: And I have no doubt --

Q And then, he becomes admitted and he withdraws his application. Is he still a member of the bar or not?

MR. TIERNAN: He is admitted to what, your Honor? To the bar or to the examination?

Q To the bar.

MR. TIERNAN: Well, he couldn't be admitted to bar under those circumstances.

Q Until when?

MR. TIERNAN: Until he is qualified as a citizen of the United States.

Q He has to then become a citizen before he comes to the bar?

MR. TIERNAN: Yes.

Q But he can take the exam on intent?

MR. TIERNAN: On a declaration of intent.

Q And -- which I don't think affects this case at all.

MR. TIERNAN: No. Now, uh --

Q How do you look at Truax against Raich?

MR. TIERNAN: That's a very -- that's a vital question. That is the vital question.

May I just --

Q Sure, go on.

MR. TIERNAN: Thank you very much.

Q Sure.

MR. TIERNAN: The one thing that occurs to me is the fact that this court does not have any machinery for admission to the bar. Presumably that, through the history of this court, is because --

Q Stay near the microphone if you want to be heard back here.

MR. TIERNAN: Excuse me. I have been accustomed to being heard in the past.

Q Yes, but we also record this proceeding.

MR. TIERNAN: Oh, I beg your pardon. This court

derives its qualifications, to a great degree, in practicing before this court, by state standards. Presumably, because they believe through the past, that they are proficient enough to be accepted and, of course, the federal system has no separate or distinct machinery for admitting people to practice before it.

Now, one of the basic rules of admission in this court is that the applicant for practice before this court, as today, must represent that they practiced in a state of this country for a period of three years.

It would be difficult to understand how a person could make a solid showing for permission to practice here on that requirement, because, of course, up till a year -- this year there was no single state that unequivocally, by decision, decided or found that citizenship was not required for admission to the bar.

Now, in reference to Graham --

Q In that connection, Mr. Tiernan, you have admission by motion in Connecticut, as I understood from your prior remark.

MR. TIERNAN: That is correct.

Q Suppose -- well, there are states today which permit a person to be admitted to the bar without proof of citizenship.

MR. TIERNAN: Yes. Yes, there are a couple.

Q And if someone presented himself to the Connecticut bar authorities with his proof of admission in one of those states, would Connecticut admit him by motion?

MR. TIERNAN: No, because under section 13 of the rules, subparagraph three, one of the requirements in addition to his practice in the other state is that he is a citizen of the United States. That is common to both nonresident or those applying on motion and those applying directly.

Q And yet here he could be admitted if he had three years behind him?

MR. TIERNAN: Three years --

Q Three years of practice.

MR. TIERNAN: Yes, three years plus the character affidavits.

Of course, I take it that this issue is not similar to the issues raised by the factual situation raised in Graham and Dunn versus Blaustein voting rights, social benefits in Graham because, of course, in that -- in those cases we have the situation where -- with reference to Graham, which advanced that compelling interest, state interest test, to be applied in aliens' classifications.

Right there it seems to me that that case distinguished in the situation there because of course the financial integrity of a state was involved, just as in Shapiro, nothing about anything else. That was a case where

they were trying to deprive people visiting the state for welfare benefits on the grounds of no duration of residence or citizenship and they said that the state had to show a compelling state interest.

That is hardly to be, I think, compared with admission to the bar because, of course, the reference that was made to the brief concerning the special judicial scrutiny required -- as a matter of fact, the mere situation in Graham in the voting case in Graham and Shapiro, the right to travel which, although it doesn't appear specifically in the Constitution, has been inserted therein by judicial decision and the fundamental right of travel of people in this country was restricted, says this Court in those cases. But in the Graham case, there was a discussion concerning one of the tests used in our history of special interest and in that very case, Graham on page 374, 403, this court stated that although the special interest test was rejected so far as the social benefits were concerned -- social benefit cases which, of course, Graham represented, this Court specifically said, "Whatever may be the contemporary vitality of the special public interest doctrine and other context after Takahashi, we conclude ---" so forth.

In other words, this very Court left open even the application of a special interest test.

Now, Mr. Justice Marshall, you referred to the -- how about Truax? Which, of course, is the case that, obviously, when this country grants entrance and abode to an alien, obviously, one follows the other.

The early efforts, of course, when this question was raised, in this country, from a country that once had many aliens when we were in the formative stages -- when that question was raised here, as in the Truax case, the Court said it was limited to the right of an alien to indulge in the common occupations of man or sometimes referred to as the common, I believe, "industrial occupations."

That has always been interpreted, even by writers, scholarly writers, law writers, that that did not include the professions.

Now, incidentally, in this connection, efforts have been made to add to that.

Q Would you give me that "scholarly writer?"

MR. TIERNAN: The Columbia Law Review -- 57 Columbia Law Review 10/26 in 1957, the title of which is, "Constitutionality of the restrictions on aliens' rights to work."

Q My question was the name of the scholarly writer.

MR. TIERNAN: I didn't have the name, your Honor, for you.

Q I couldn't find it, either.

MR. TIERNAN: The name? No, I couldn't, either.  
That is correct and that is why I didn't give you any name.

Q But it is said --

MR. TIERNAN: No, it isn't, it is a comment, I think.  
No, it isn't --

Q It is a student comment.

MR. TIERNAN: I don't know whether it was --

Q It is a student comment; that is all it is.

MR. TIERNAN: Well, there were others. That was  
just a --

Q It was a scholarly student's comment.

(Laughter.)

But what can you point to me in Truax that says it is limited in any fashion at all? And I think you will agree that Chief Justice Hughes didn't use broad language unless he meant it.

MR. TIERNAN: Yes.

Q He said it was a denial of equal protection for a state to draw the line between the alien and the citizen in the matter of employment and right to make a living.

MR. TIERNAN: Yes, but of course, how can this be considered as all-inclusive and have any meaning to the 14th Amendment?



Q Pardon me?

MR. TIERNAN: How could this be considered as being all-inclusive for all forms of occupation, activity, including the professions, when it is indicated classifications are permissible. They must be justified. After all, even bar admission rules must be within the framework of the Constitution but how can we ever permit any classifications, if such, so far as employment is concerned, if that is so now?

Q And do you agree that the State of Connecticut could not say that redhaired people couldn't be admitted?

MR. TIERNAN: I hope not.

Q Of course. Of course.

MR. TIERNAN: Uh, the --

Q Well, what is the reason that the aliens -- this is all aliens. This is the -- is it competence or is it character or what is it?

MR. TIERNAN: Well, no, it is -- uh --

Q What is it?

MR. TIERNAN: Well, as a matter of fact, Mr. Justice Marshall, I believe history records that when Connecticut was saying no to aliens, they were saying yes to women. Now, I don't know whether that would be called -- and that was some time ago.

Q I am only asking about aliens. Why are they

excluded? Why?

MR. TIERNAN: Because, in the State of Connecticut, the court has established by -- presented, I should say, by its decision, that because of the status and the position of the lawyer in the state -- there are other conditions of qualification that are required, citizenship, residency, educational requirements -- they say, the court stated, that in order to have a system toward the administration of justice and in the public interest in Connecticut, a lawyer who is clothed with the right to command actions by authority of the State of Connecticut in connection with his affairs both private, both public and in his reference to individuals, as a counselor --

Q Do you mean that an alien is more dangerous in his private life than a citizen?

MR. TIERNAN: No. No. No.

Q Do you --

MR. TIERNAN: No.

Q -- say then, an alien is less competent than a citizen?

MR. TIERNAN: No, I didn't say that.

Q Do you say that an alien has less character than a citizen?

MR. TIERNAN: What you are trying to say is, an alien is an irrational classification per se. This court

has not said so, but you have the opportunity to say it right now.

Q WELL, I am waiting for you to give us a reason why we shouldn't say it.

MR. TIERNAN: Well --

Q I am still waiting for that reason.

MR. TIERNAN: I am backing up the court in this case in which I represent; in Connecticut, the court stated that because of the position that member of the bar holds, that citizenship is a requirement, that there is nothing irrational about the state asking for that in accordance with the precepts set down by the decisions of this court and in the first place, as one said, just examine the duties of a lawyer, his relationship both to the individual, the public, his connection with the court, his involvement with the rules, his involvement of the procedure and the changing procedure and changing rules -- all this is connected with the government --

Q Am I correct that this applicant has two law degrees?

MR. TIERNAN: There are three degrees. I think one is --

Q Well, two?

MR. TIERNAN: There is no question she has a degree from --

Q Well, isn't she qualified to understand the rules?

MR. TIERNAN: Oh, she -- she --

Q Well, you said the lawyer has to understand the rules. Well, she is qualified. You don't question that, do you?

MR. TIERNAN: I didn't say she -- it is obvious she understood the rules because she so admitted in the transcript. She was asked if she was aware of the rules and she said yes, and she signed the affidavit of the application. She --

Q I am still trying to get the reason. You haven't -- at least haven't satisfied me of any reason at all except the fact that she is an alien.

MR. TIERNAN: Well, in the first place, if your Honor please, the court stated, really, three things. The court stated that, first, a lawyer in Connecticut, as generally stated, is an officer of the court.

Secondly, that in Connecticut, in addition to that, the attorney is a commissioner of the Superior Court. And in that connection, the commissioner of the Superior Court of Connecticut has the right -- has the right to sign civil process suits and command executive officers to serve those documents in the state and --

Q Well, this man sitting beside you is now a resident of Fort Worth, Texas and can go up there and serve

one right now. Am I correct?

MR. TIERNAN: Well, he can't serve it. He can sign it, yes, your Honor.

Q Couldn't he?

MR. TIERNAN: Any member of the bar that has a commission automatically becomes on the Superior Court.

Q He can drop up there and serve one and go back to Fort Worth and that doesn't offend Connecticut at all.

MR. TIERNAN: I uh --

Q As a matter of fact, he could move to Honolulu and come back and do it. Furthermore, he could move to the Netherlands.

Am I correct that he could move to the Netherlands and come back and do commissioner work?

MR. TIERNAN: Well, of course, as long as he returned -- as long as he retains his position in Connecticut --

Q Right.

MR. TIERNAN: -- whether known by the authorities or not, in whatever connection, he has, of course, closed with the rights of the office that he has.

Q Would he lose it if he took out Netherlands citizenship?

MR. TIERNAN: Well, of course, that would be obviously a question that would have to --

Q Would he? Under those rules?

MR. TIERNAN: Well, there is no rule here that says that you can be a citizen of two countries and still be a lawyer, and, of course --

Q Well, if a person gives up his citizenship, does he resign from the bar automatically?

MR. TIERNAN: If he gives up his citizenship, what, sir?

Q If he gives up his citizenship, his United States citizenship, does he lose his bar membership in Connecticut?

MR. TIERNAN: Oh, no, there is no such provision.

Q So that this man who is sitting here now, Mr. Broiles, can go to the Netherlands, live in the Netherlands, take out Netherlands citizenship and he will still be able to practice law in Connecticut?

Am I right or wrong?

MR. TIERNAN: By what test or standard do you mean?

Q Under the law in Connecticut, right now.

MR. TIERNAN: Well, there is no specific provision that covers any particular case, if your Honor please.

Q Well, there is nothing in the law that says once he loses his citizenship he loses his right to practice law.

MR. TIERNAN: Well, I assume that that can be

considered without any specific reference thereto.

Q Well, I don't see any --

MR. TIERNAN: Then you get into the international question or the federal question of citizen -- you know, may I just call attention of this Court to the fact that in this particular case there was question raised at the committee hearings as to whether or not there was any treaty existing between the Netherlands and the United States and the applicant said there was no treaty concerning reciprocal rights of either national to practice in the state or country of the other, but, actually, at that very time, there was a treaty, and is, a treaty between the Netherlands and the United States which, in declaring the national treatment of the nationals of either country, specifically excluded, by the protocol of that treaty, the professions.

Q Is it in those treaties?

MR. TIERNAN: It was, after the treaties in 1956.

Q While I have interrupted you, Mr. Tiernan, let me ask you one other question, which really isn't your case, but it still bothers me.

MR. TIERNAN: Yes.

Q Am I correct in my understanding that Connecticut, in addition to requiring citizenship for attorneys and physicians, also requires it for funeral directors and embalmers and hairdressers and barbers and

sanitarians?

MR. TIERNAN: Yes, that was listed in the original court decision of the Supreme Court as a reference at the Appendix.

Q Is it a fact that the state does this?

MR. TIERNAN: The statutes are still there.

Q Did you include Marquesett?

MR. TIERNAN: I did. That is almost becoming moot in Connecticut, but that is a fact that those statutes are still there.

Q Because there are no barbers -- or?

MR. TIERNAN: You see, I come from New Haven, Justice White, and the demand is lessening.

(Laughter.)

Now, with reference to the Bellei, Rogers versus Bellei, the question of dual citizenship, of course, raises a problem. This has been reiterated in the courts of this -- in this Court in the decisions of this Court and it is impossible in the case of lawyers to imagine that a person with dual nationality, dual citizenship, dual allegiance, would be able to fulfill the tasks <sup>that</sup> that person has in reference to the practice of law.

Q Have we got dual citizenship involved here?

MR. TIERNAN: Well, it isn't because, of course, this applicant wants it this way. Being a citizen of the



Netherlands --

Q Well, I don't -- she doesn't claim dual citizenship in any --

MR. TIERNAN: No. No.

Q Well, how is it in this case?

MR. TIERNAN: Well, she is getting around that. She is going to have opts. She is going to be a citizen of the Netherlands, her country of origin, and the right to practice law in Connecticut and if that isn't having it both ways, I can't imagine what is.

The fact is that -- also referred to here -- in this situation -- is the case of Schware, the case to which -- it's about the only case that set down the test of what is necessary for the admission standards, reasonableness was required and it is felt that here that the rule in Connecticut is reasonable and rational with reference to the admission of any candidate for the bar of Connecticut.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

(Whereupon, at 11:03 o'clock a.m., the case was submitted.)