
George Anastaplo

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WHAT IS STILL WRONG WITH GEORGE ANASTAPLO?
A SEQUEL TO 366 U.S. 82 (1961)*

George Anastaplo**

No deity thus far has ever given men a reliable view of what the future holds in store; hints of things to come are all obscure. Men get much that they do not expect: a pall on pleasure, or a deep delight which suddenly follows their wallowing in the muck of losing struggles.

Son of Philanor, the honor of your running would have lost its luster by your family hearth, like a fighting cock challenged only at home, if civil war had not driven you away from Knossos. Now you've won Olympic laurels, and twice the Pythian Games, and the Isthmian Games as well—a credit to the land that you have made your own.

—Pindar, Olympian Ode XII

I.

I have been asked to speak about recent developments in my Illinois bar admission controversy, a controversy that began in November 1950.¹ I am grateful for this opportunity to bring these matters up-to-date, particularly since this is the first time I have been asked to speak about my case in Southern Illinois.²

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* A talk sponsored by the Department of History, Southern Illinois University, Carbondale, Illinois, March 6, 1984. On the title for this Article, see infra note 37.

This talk is followed by appendices related to George Anastaplo's careers (academic as well as legal).

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1. For the chronology of my bar admission matter, see infra Appendix I. See also infra Appendix XI, Item J.

For an earlier discussion of all this, see Briefs and Record, In re Anastaplo, 366 U.S. 82 (1961); G. Anastaplo, The CONSTITUTIONALIST: NOTES ON THE FIRST AMENDMENT app. F (1971) [hereinafter cited as The CONSTITUTIONALIST]; Anastaplo, Mr. Justice Black, His Generous Common Sense and the Bar Admission Cases, 9 Sw. L.J. 977 (1977) [hereinafter cited as Mr. Justice Black]; Anastaplo, In re Anastaplo: A Progress Report, Nat'z L.J., June 18, 1979, at 21 [hereinafter cited as A Progress Report]; see also infra note 66 (citations of recent discussions).

The reader is urged, as with my other publications, to begin by reading the text of this Article without consulting its notes.

2. On Southern Illinois, see Anastaplo, Law, Lawyers and Property: The Open Society and Its Limitations, 20 WILLAMETTE L.J. 615, 630-31 (1984) (At page 631, line 20, “reluctance” should be “inclination,” and at page 641, line 7, “common” should be “common good”). The last word in the appendices is from Southern Illinois. See infra Appendix XIII.
Some background is needed if I am to be able to describe properly and
to comment usefully upon recent developments in my bar admission matter.\(^3\) I
do not intend to say much about my strictly private morality, which is probably not much better, nor much worse, than that of many of my
countrymen. It suffices to notice that I have been married since 1949 and
that my wife and I have four children, one of whom is even a lawyer.\(^4\)

I was born in St. Louis, Missouri, in 1925, and grew up in Carterville, Illinois, a town of less than 3,000 people in a county adjoining this one.\(^5\) In
1943, a few months after graduating from Carterville Community High
School, I volunteered for service in the United States Army Air Corps.\(^6\) In
eyear 1947 I left active duty as a second lieutenant, having flown as a
navigator in the Pacific, Europe, North Africa and the Middle East. I then
received the A.B. and J.D. degrees from the University of Chicago.\(^7\)

II.

I passed the Illinois bar examination in the fall of 1950 and appeared
before the Committee on Character and Fitness (in Chicago) for a routine
inquiry on November 10, 1950 (three days after my twenty-fifth birthday).\(^8\)

\(^3\) The "recent developments," which had led to the invitation for me to speak in
Carbondale, are recorded infra at Appendices X, XI, & XII. See also infra note 66.
\(^4\) The pressures to which my wife was subjected because of my bar admission troubles
are alluded to in the following report:

Particularly influential in these developments was Edward H. Levi, who was dean
of my law school when my troubles began, then provost and finally president of
the University of Chicago (in which capacities he stopped efforts on more than one
occasion to secure me regular teaching posts on the University faculty). From the
beginning (that is, in 1950), he put pressure on me, as well as on my wife, to get
me to give in to the [Character] Committee's demands.

\ldots \, [M]y wife has always thought that Mr. Levi should have had more sense
than to threaten (as he did) a Texas oilman's daughter with something so routine
from her childhood as the loss of a regular income. In short, Mr. Levi pushed the
wrong buttons, perhaps the most serious of offenses by a supposed "legal realist."

\textit{A Progress Report, supra note 1, at 33. See infra Appendix V, Items B & E; infra note 45.}
\textit{See also Dedication to Anastaplo, \textit{The Artist as Thinker: From Shakespeare to Joyce}
(1983) [hereinafter cited as \textit{The Artist as Thinker}]; \textit{Epigraph to Anastaplo, \textit{An Introduction
to the Gilgamesh Epic, Great Ideas Today} (1986). See also The University of Chicago Directory
at 318 (1987).}

\(^5\) Carterville, about one hundred miles southeast of St. Louis, is in Williamson County,
Illinois. Carbondale is in Jackson County, Illinois.
\(^7\) I also was awarded membership in Phi Beta Kappa and the Order of the Coif.
\(^8\) The Character Committee had seventeen members, with subcommittees of one or two
members conducting the routine inquiry of applicants. They sat as Commissioners of the Illinois
Supreme Court.

In those days it was possible for some applicants to take the bar examination during the
last year in law school. My last law school classes were in December 1950. My class graduated
in June 1951, by which time I was studying at the Sorbonne (while I was waiting to hear from
The opinions about "the right of revolution" I expressed on that occasion—in response to Committee questions—so troubled the Committee that it asked me whether I was a member of the Communist Party.\(^9\) My refusal to answer such inquiries, as well as the opinions I candidly developed about the Declaration of Independence and its right of revolution, proved to be at the heart of the differences the Illinois bar authorities and I had in our various encounters during the following decade.\(^{10}\)

In 1951, the Committee turned me down, 16-1.\(^{11}\) In 1954, the Illinois Supreme Court upheld the Committee, 7-0.\(^{12}\) In 1955, the United States Supreme Court refused to review the case.\(^{13}\) I returned to the University of Chicago to earn still another degree and otherwise to prepare myself to teach.

In the meantime, however, the United States Supreme Court took two other bar admission cases, seeming to rule in favor of the applicants.\(^{14}\) These 1957 rulings prompted me to reapply for admission to the Illinois bar. In 1958 the Committee held twenty hours of hearings (with me as its only witness). The Committee deliberated for a year thereafter, then ruled against me in 1959, 11-6.\(^{15}\) The issues remained the same: my opinions about the
right of revolution; my refusal to answer any questions about "political" affiliations.16

The Illinois Supreme Court again reviewed its Committee's denial of admission; and again it ruled against me in 1959, but this time 4-3.17 The United States Supreme Court heard my case.18 That Court, in 1961, upheld the bar authorities, 5-4.19

Once I finished my appellate efforts before the United States Supreme Court,20 I informed the Illinois Supreme Court that I did not intend ever again to apply for admission to the Illinois bar. I concluded that 1961 letter by saying, "Should my position or temperament ever be recognized as useful to the administration of justice in this State, I trust the Illinois Supreme Court will not hesitate to call on me for any further contribution I might honorably make to constitutional government and the rule of law."21

In 1957 I had begun teaching in the adult education division of the University of Chicago (in a post I still hold).22 I received the Ph.D. degree from the University of Chicago in 1964 and began teaching that year in the Political Science Department at Rosary College.23 A few years ago I became

were James P. Carey, Jr., J.R. Christianson, James E. Hastings, George N. Leighton, Edward I. Rothschild and Calvin P. Sawyier.


17. In re Anastaplo, 18 Ill. 2d 182, 163 N.E.2d 431 (1959). The dissenting opinion of Justice Bristow was particularly noteworthy. See Dilliard, supra note 16 at 959-61; Mr. Justice Black, supra note 1, at 996, n.26 & 1008, n.45.

18. Konigsberg and Anastaplo were argued the same day, December 14, 1960. Cohen v. Hurley, 366 U.S. 117 (1961), a disbarment case, was also argued at the same time. See Mr. Justice Black, supra note 1, at 985 n.10.

19. 366 U.S. 82 (1961). The Official Syllabus of the Court and the dissenting opinion by Justice Black are reprinted in The CONSTITUTIONALIST, supra note 1, Appendix F.


21. See infra Appendix II.

22. This is the Basic Program of Liberal Education for Adults. The current reading list for this program is reprinted in The ARTIST AS THINKER, supra note 4, at 299-300. I was able to begin teaching in the Basic Program because of the good will of Maurice F. X. Donohue, then dean of the University of Chicago extension programs. See infra Appendix V, Item E. I also conduct seminars in the summer program for adults at The Clearing, in Door County, Wisconsin. See Anastaplo, Martha Fulkerson: Guardian of the Clearing, 117 CONG. REC. 46881 (daily ed. Dec. 14, 1971). In recent years I have served as a consultant for the Paideia public schools program developed by Mortimer Adler.

23. My University of Chicago dissertation, with the Committee on Social Thought, was entitled, "Notes on the First Amendment to the Constitution of the United States." The Rosary College post—the only regular academic post available to me for many years—came through the good graces of the president of that school, Sister Candida Lund. See infra Appendix V, Item E; Appendix XII, Items C & D.

Sister Candida Lund, of Rosary College, and Professor David Grene, of the Committee on Social Thought, were secured by Calvin P. Sawyier as witnesses on my behalf before the Committee on Character and Fitness in 1978. See infra Appendix VII, Items I & K.
inactive at Rosary College upon joining the faculty of the Loyola University of Chicago as Professor of Law.\textsuperscript{24}

The more dramatic aspects of my public career since the Second World War were nicely summed up by a distinguished scholar (and past president of the American Political Science Association) when he introduced his review of my first book with these observations:

On April 24, 1961, the Supreme Court of the United States, by a vote of five to four, affirmed the action of the Illinois Supreme Court which, by a vote of four to three, had upheld the decision of the Committee on Character and Fitness of the Illinois bar which, by a vote of eleven to six, had decided that George Anastaplo was unfit for admission to the Illinois bar. This was not Anastaplo's only such experience with power structures. In 1960 he was expelled from Soviet Russia for protesting harassment of another American,\textsuperscript{23} and in 1970 from the Greece

\textsuperscript{24} Professor William T. Braithwaite, a former student in the Basic Program of Liberal Education for Adults and a current member of the Loyola law faculty, had much to do with promoting my appointment to his faculty. See infra Appendix XII, Item B.

As a professor of law, I am to be provided the following description in the Loyola School of Law catalogue for 1987-1988:


See infra Appendix IX, Item B.

My article on the Northwest Ordinance in the Illinois Bar Journal has the following editors' description of the author:

George Anastaplo is professor of law at Loyola University and lecturer in the liberal arts at the University of Chicago. He is a graduate of the University of Chicago (A.B. 1948, J.D. 1951, Ph.D. 1964). Among his distinctions is that he inspired the eloquent dissenting opinion by Justice Hugo L. Black in the bar admission case, In re Anastaplo, 366 U.S. 82, 97 (1961).


25. See ANASTAPLO, HUMAN BEING AND CITIZEN: ESSAYS ON VIRTUE, FREEDOM AND THE COMMON GOOD 226-27, n.4 (1974) [hereinafter cited as HUMAN BEING AND CITIZEN]; THE ARTIST AS THINKER, supra note 4, at 478; Mr. Justice Black, supra note 1, at 1048 n.78. See also infra Appendix IX, Item A(i).
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of the Colonels. As W. C. Fields might have said, any man who is kicked out of Russia, Greece and the Illinois bar can't be all bad.

III.

From time to time since 1961, various lawyers and organizations have tried to persuade the Illinois Supreme Court to reverse its order denying me admission to the bar. Since 1965, I have had little to do with these honorable efforts, neither encouraging nor condemning them. Three of these efforts have been particularly remarkable.

One such effort was the 1978 decision by the Character and Fitness Committee, at the urging of Calvin P. Sawyier and others, to recommend

26. See HUMAN BEING AND CITIZEN, supra note 25, Essay No. 1; Anastaplo, Notes toward an 'Apologia Pro Vita Sua,' in 10 INTERPRETATION: A JOURNAL OF POLITICAL PHILOSOPHY 332 (1982) [hereinafter cited as Apologia]. See also infra Appendix IX, Item A(i); Appendix X, Item A(i); Appendix XII, Item C. On contemporary Greece, see my contributions to the article on modern Greece in the current edition of the ENCYCLOPEDIA BRITANNICA.


28. See infra Appendices III, VII, & XI. See also notes 1 & 13 to the appendices. For a few years after 1961, I was willing to file a formal application with the Committee on Character and Fitness if the Committee could be induced to abandon publicly its approach toward me. Indeed, I even made, upon request from Calvin P. Sawyier, suggestions about what might be included in a petition to the Committee from him and others. Of course, the petitioners (as experienced lawyers) were quite capable of doing things their own way, which they did on several occasions. See infra Appendix III, Items A & B. See also infra note 29. Stanley A. Kaplan and Elmer Gertz were also active on my behalf. See infra Appendix XI, Item C.

In October 1978, I prepared the following letter to the editors on behalf of the unsuccessful candidacy of Mr. Sawyier as a nominee of the Republican Party in Cook County:

Please allow me to add still another endorsement to the many already made of Calvin Sawyier's candidacy for the Illinois Appellate Court.

Mr. Sawyier was a member of the Character and Fitness Committee two decades ago when I was denied admission to the Illinois bar for refusing, on principle, to answer questions about my political associations and my religious opinions. Unlike most of his committee colleagues, Mr. Sawyier need not be ashamed today of how he conducted himself then. He, at least, did not permit justice and common sense to be swept aside by Cold War passions.

In short, Mr. Sawyier was one of the few lawyers on that committee to exhibit the required judicial temperament. See THE CONSTITUTIONALIST, supra note 1, at 407-08.

29. I do not believe I ever saw any of the petitions before they were filed. I may have seen an early draft of the one filed on April 27, 1966. (I have not yet found a copy of that early draft. See supra note 28). See infra Appendix III. Sometimes I did not see the petitions until long after they had been filed. There may even have been some approaches to the Committee on Character and Fitness about which I still do not know. Of course, there was a tendency for the later petitions to draw upon the earlier ones that had been filed with the Committee. See infra note 81.
me to the Illinois Supreme Court for admission to the bar. On January 26, 1979, the chairman of the Character Committee wrote a letter to the Illinois Supreme Court that concluded with these observations:

For myself, I believe that the past actions of the Committee on Character and Fitness in the Anastaplo case have caused a significant impairment in the credibility of the entire Character and Fitness procedure. A man who has absolutely no blemish on his character and who had demonstrated great courage in standing by his principles was denied a Certificate of Character and Fitness. Obviously something was wrong. Because of Mr. Sawyier’s petition, the Committee had the opportunity to correct this error and by a vote of 13 to 4 saw fit to do so. I sincerely hope that this Court can see the propriety, legality and wisdom of this decision and act on what I believe is properly before the Court.

The second particularly remarkable effort was the adoption by the House of Representatives of the Illinois General Assembly, in April 1979, of a resolution addressed to the Illinois Supreme Court on my behalf. The Resolution, which I do not recall having seen before it was adopted, opens with the observation that George Anastaplo is “a respected professor and author in the field of political science and constitutional law.” It then goes on to extol my virtues (and to overlook my obvious shortcomings). The Resolution concludes with the directive that “this body of the Illinois General Assembly deliver this Resolution to the Illinois Supreme Court and to memorialize the members of the Court to recognize their error and to admit George Anastaplo to the Illinois Bar.”

The Illinois Supreme Court made no response that I know of to the Resolution from the House of Representatives. It had responded to the Character Committee recommendation by saying, in March 1979, that “it would be inappropriate to act on this matter in its present posture.” I gather that critical to the Illinois Supreme Court’s decision, then and ever since, has been my consistent refusal to reapply for admission to the bar: I have long preferred to allow matters to remain just as they are, so far as anything depended upon me.

30. See infra Appendix VII, Items B & F. It was this phase of developments which aroused the interest of the National Law Journal (in 1978-79). See infra note 66. I brought matters up to date in my June 18, 1979, article for that journal. See supra note 1.

31. See infra Appendix VII, Item I.

32. See infra Appendix VIII. The principal sponsor was Representative Barbara Flynn Currie of Chicago. See infra Appendix X, Item A(iv); infra note 47.

33. See infra Appendix VIII. It was, I believe, much later that I learned that the indefatigable Calvin P. Sawyier had been consulted by Representative Currie and her Aide, Forbes Shepherd, in the preparation of the Resolution.

34. See infra Appendix VII, Item J; A Progress Report, supra note 1, at 21, 33 (“Edward Mosk, the Los Angeles lawyer who worked so gallantly for decades to secure Raphael Konigsberg’s admission to the California bar, has an apt suggestion as to what the proper ‘posture’ would be: ‘Down on one knee!’ ”).

The third particularly remarkable effort on my behalf was made by the Illinois State Bar Association in 1983. I will, in the course of describing recent developments related to the Illinois State Bar Association initiative, comment as well on earlier developments in my bar admission matter. One such earlier development should be mentioned here, an award to me (on October 12, 1979) by another bar association, the Chicago Council of Lawyers, which commended my "commitment to ideals, in both word and deed."36

IV.

A key question remains: "What is still wrong with George Anastaplo?"37 I anticipate much of what I will be saying here by suggesting that what is really wrong with me is that I have the knack of saying certain things that are so sensible that people cannot believe I mean them. Thus, in the 1950s, I was not believed when I said that it was harmful to the bar and to the community for the Committee on Character and Fitness and the courts to conduct themselves as they did—and that I would not acquiesce in what they were demanding, because that would do both them and me a great disservice.38 In more recent years, I have not been believed when I have said

36. See infra Appendix IX, Item A (for my response), Character and Fate. See also Chi. Daily L. Bull., Oct 25, 1979, at 1 (the caption for the photograph should read "appreciation" in place of "application"). For an earlier exchange with the Chicago Council of Lawyers, see infra Appendix VI. See also 125 CONG. REC. E6162 (daily ed. Dec. 15, 1979).

I gave a talk entitled "Character and Freedom" on December 15, 1975, in response to the Harry Kalven Freedom of Expression Award from the Illinois Division of the American Civil Liberties Union. This talk has been published in Anastaplo, Passion, Magnanimity and the Rule of Law, 50 S. CAL. L. REV. 351, 370 (1977). In 1983, I received the Patron's Choice Award from the Cultural Center of the Chicago Public Library for a lecture on Shakespeare.

37. My Southern Illinois talk in 1984 can be considered a sequel also to a University of Illinois talk in 1963. See HUMAN BEING AND CITIZEN, supra note 25, at 105 (text of the earlier talk). I had attended the University of Illinois for a few months in 1943 before I could enlist in the Army Air Corps. I attended Southern Illinois University for a few months in 1947 before I could begin at the University of Chicago.


So long as commercial success is the highest value of the [legal] profession, justice will be rationed. So long as we don't work as hard for social justice as we do for legal justice, not realizing that legal justice cannot be accomplished without social justice, justice will be rationed.

If we can look beyond our mores, our value patterns, and see the meaning of materialism for the conduct of the agents of the rule of law, then we can liberate ourselves. As individuals we can find ways to pursue justice, to share justice, to spread justice among people for whom it has been a rare quality. In doing so, we find freedom for ourselves as well.

Fear will be the enemy, as it is of every human act that defies cultural norms. I would leave you with Justice Black's admonition from a glorious case we should
that it would be best for the bar and the courts to leave my bar status as it has been since 1950—and that, in any event, I would have to reserve judgment as to how I would respond to anything done on my behalf.39 Even so, I do recognize that various officials may well have a desire, and perhaps even a duty, to try to correct the misconduct of their predecessors.40

Fundamental to all this is the concern we must all have about the gulf between the lives we lead and the principles we cherish. This bears upon our ability to make and to keep our lives meaningful. One assurance should be kept in mind when one is involved in such controversies as have come my way—and that is the assurance that if one keeps saying sensible things, one will eventually make satisfactory contact with good-natured people of intelligence here and there.41

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39. See supra note 35; infra text accompanying note 77. Friendly lawyers were sometimes appalled by the conditions I seemed to lay down for the Illinois Supreme Court from time to time. See, e.g., infra Appendix VII, Item E; infra note 77. For still another “appalling” comment which troubled one of my well-wishers, see infra Appendix XII, Items C & D.

40. See infra Appendix VII, Item I; Appendix XI, Item F; Appendix XII, Item A.

41. See infra Appendix IV, Item B; Appendix V, Items E & G. Consider also the concluding remarks I made in a talk on Clausewitz’s treatise on war at a Defense Intelligence College conference in Washington, D.C., August 28, 1986:

We should be on guard against that cleverness which can be easily mistaken for prudence, thereby pulling us into a general thoughtlessness, whether in the academy or in the councils of state and of war.

Thoughtlessness may be seen in the temptation to try to imitate the Russians in the conduct of our own affairs at home as well as abroad. We have heard a number of references this week to how much easier it is for the world to know what Americans are up to than to know what the Russians are up to. All too often these references have had the tone of laments, whereas the state of things reflected here should be a cause of celebration. Does not our enduring strength depend upon a freedom which enlists the imagination and energy of an entire people to a degree unprecedented in the annals of mankind?

Perhaps the most instructive thing for me personally this week has been something that many of you must have already been familiar with. I could not help but be intrigued on Tuesday by the openness, even the casualness, of the lobby entrance to the Defense Intelligence Agency headquarters out at Bolling Air Force base—especially as I tried to imagine what the Russian counterpart to that place must look like. The considerably greater strength, now and for the foreseeable future, of the United States seems to me very much the consequence of a responsible and highly productive freedom.

How our freedom can be kept responsible is, of course, a serious question. Much depends upon the moral character, and hence the education, of our people. We should take care lest we depend unduly upon clandestine operations and secret information, a dependence which we should appreciate the horrendous costs of as we observe how generations of Russians have crippled themselves.

Indeed, it can be said, the world depends upon us to conduct the informed debate
The most recent revival of official activity regarding my bar matter began with the publication of a long article about me in the December 1982 issue of Chicago magazine. The article was written by a young man not even born when the controversy began in 1950. He was, in researching his article, quite skillful in the use of the telephone. And so he was able to turn up people who were associated with my case many years ago, some of whom had never before been publicly quoted about it.

Particularly striking was the recollection by a lawyer now practicing in Wisconsin who had been Secretary to the Committee on Character and Fitness throughout my decade of litigation, litigation which I conducted personally (including oral arguments in the Illinois Supreme Court and in the United States Supreme Court). I always found the Committee Secretary courteous whenever I dealt with the Committee through him. What I had not suspected, however, was how much he had resented the way the Committee had conducted itself toward me, so much so (he reported) that he becomes angry to this day whenever he recalls how I was treated by the lawyers he served. The Chicago article quoted him as saying, "If [Anastaplo] became testy, it's because he was baited. His behavior was always very professional. They should have admired his courage and his ability. But you could predict a vote before a vote was ever taken. When I think about it, I get mad all over." This kind of revelation reminds us that it can be difficult to determine from written records alone (such as formal correspondence and legal papers) how people truly regard the official stance they are obliged to take in public. Even so, I myself should not like to be put in the position of being identified for decades with highly questionable conduct. The Committee Secretary was

that is needed over the next decade for a sensible guidance of mankind into the Twenty-first Century. Not the least of the beneficiaries of our virtues should be the Russians themselves, whom it would be prudent not to regard always or simply as adversaries.

See also text accompanying note 85; infra Appendix IX, Item B; note 101.

42. Patner, The Quest of George Anastaplo, Cmt. Mag., December 1982, at 184. See infra Appendix X. (Mr. Patner is now a student in the University of Chicago Law School).

43. See, e.g., infra Appendix I, Item A. Richard H. Cain (he had been Committee Secretary between 1950 and 1961) was listed as a member of the Committee on Character and Fitness on the letterhead of a May 19, 1966 letter from the Committee. See infra Appendix III, Item D.

44. Patner, supra note 42, at 188. Mr. Cain's 1982 account of the 1950-1958 Committee proceedings was anticipated by the 1961 account by Justice Black of 1960 proceedings in his Court:

Faced with a barrage of sometimes highly provocative and totally irrelevant questions from men openly hostile to his position, Anastaplo invariably responded to the Committee on Character and Fitness with all the dignity and restraint attributed to him in the affidavits of his friends. Moreover, it is not amiss to say that he conducted himself in precisely the same manner during the oral argument he presented before this Court.

done a great service by being asked to reminisce about his association with me: a sensible man does take advantage of (if he does not even create) such an opportunity.

V.

Others, however, did not take advantage of the opportunity afforded them by the Chicago inquirer. Some refused to say anything, including the surviving members of my law school faculty who had been unfriendly, to say the least, about my presumptuousness in resisting the Character Committee’s demands. I have had occasion to comment upon the disgraceful manner in which the majority of that faculty and its dean conducted themselves. Yet they maintain a stony silence, at least in public. Just the other day, a longtime observer of that faculty could wonder with me, not without laughter, whether anything I might say about that faculty, no matter how outrageous, would ever provoke a response from any of its survivors. But then, there may be something sensible about their persistent silence in public: when one has disgraced oneself, perhaps there is really nothing to be said, so long

45. Most of the faculty were obviously sympathetic with the approach taken by their dean. See, e.g., Patner, supra note 42, at 187:

   Notably silent [in public] was Edward H. Levi, then dean of the law school and later president of the university and U.S. Attorney General. Levi called Anastaplo into his office and warned him not to jeopardize his career. Later he met Anastaplo’s wife, Sara, and reminded her that the law school could give her husband no support in his embarrassing battles with the bar authorities.

   Levi was not to support Anastaplo in his teaching career, either. On several occasions, Anastaplo was to find that appointments to the college faculty at the University had been held up by the administration. Once he had even taught his first class (on the Declaration of Independence) when he found out. On another occasion, Levi discouraged a series of lectures Anastaplo was to give on the First Amendment at the university’s downtown center. See supra note 4; infra note 116 and Appendices IV & V.

46. Mr. Levi refused to be interviewed for the Chicago Magazine story. Patner, supra note 42, at 187. He did speak on my bar admission controversy to a writer for the New York Times Magazine in 1975. See infra Appendix V, Item B. Comments by me on my law school faculty and its dean may be found in Mr. Justice Black, supra note 1, at 981, 1006, 1019-20 & 1048; Mr. Crosskey, supra note 38, at 220 n.24, 259-60 n.220. See also the indexes in my books.

   No doubt there has been private talk about me of which I may not even be aware. But such talk is cheap—and not to be taken seriously. I have been remembered as a student who could come to class in his pajamas, something which I have absolutely no recollection of. I did bring a canary to Contracts class once, to illustrate a point in the discussion of consideration. And I tried to bring a horse to Property class to illustrate a distinction between personal and real property. But neither the canary nor the horse wore pajamas. I was responsible once for alarm clocks going off in series at the end of a class, to confound a professor who always ran overtime. May this account for the pajamas association? I have also been remembered as a chain smoker in my student days, even though I have never smoked. I can even be reported as “small” in stature, even though I may be over five-feet-ten. Perhaps these are metaphorical ways of talking about someone who could easily be regarded as “unrealistic,” if not even suicidal or at least bowed down under the cares of the world.
as one is incapable of making restitution. I shall have more to say later about what proper restitution would be in these circumstances. However that may be, the known hostile response of my law school faculty and thereafter of the University of Chicago Administration proved to be critical to my academic career for more than two decades.47

Then, to return to the Chicago article, there was the former Character Committee member who told his would-be interviewer that he would say nothing, protesting that the press had always sided with me by refusing to present his opinion. Thus, he is quoted as saying about me, "He's wrong. I don't want to go through that again. I've given about five interviews and nothing that I have said has appeared anywhere in the press."48 This man has occasionally given the impression that he has been the one victimized by the way I was treated by the bar, despite the fact, evident from the transcripts of the six 1958 hearings, that he was one of my nastier inquisitors. How can it be that he should feel victimized? It may be that he came to sense some years ago—for he is a quite intelligent chap, a former Rhodes Scholar and all that—he came to sense not only that his nastiness had been all too evident but also that it had been childish and ineffectual. This kind of man considers himself tough and realistic; he does not relish being exposed as a shortsighted and foolish bully.49

There was something about my bar controversy which permitted people to show the world the stuff they were made of. Perhaps this is still so. Two of my law professors, Malcolm Sharp and Harry Kalven, early and often manifested themselves as sensitive, decent and intelligently helpful men. Their merits and contributions are acknowledged in the Chicago article.50 On the

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47. See infra Appendices IV, V, & XII. My readers are apt to be misled if they are not reminded that others in a position to know have praised Mr. Levi more than I do. Consider, for example, Anthony Lewis's column in the New York Times:

[George] Shultz is a conservative of an old-fashioned kind, one who does not think the end justifies the means. In that he is like his old friend and colleague at the University of Chicago, Edward H. Levi, Attorney General in the Ford Administration. One might disagree with Mr. Levi's policies, but there was never any possibility that he would bend a principle for reasons of politics or personal ambition.

N.Y. Times, Dec. 23, 1985, at 17, col. 1. Be that as it may, the University of Chicago, by acting as it did toward me, made the price higher and the challenge more serious—and hence the accomplishment greater. I should add that I know little about the younger members of the current University of Chicago Law School faculty. The wife of one of them was primarily responsible for the Resolution printed infra Appendix VIII. See infra Appendix V, note 4.


49. See infra Appendix IX(i). See also, The CONSTITUTIONALIST, supra note 1, at 342-46; Mr. Justice Black, supra note 1, at 1012-13; NAT'L L.J., Nov. 5, 1979, at 35; NAT'L L.J., Dec. 3, 1979, at 14.

50. See Patner, supra note 42, at 187. My supporters on the law faculty included Stanley A. Kaplan, Wilber Katz, Roscoe Steffen and Hans Zeisel. On Mr. Sharp, see the obituaries published in the August 15, 1980 issues of the New York Times, the Chicago Tribune, and the Chicago Sun-Times. See also infra Appendix V, Item G. The publications of my supporters
other hand, the article also records the kind of limitations that all too many members of the Character Committee were subject to. This may be best illustrated by the way one of the most prominent—certainly the most obviously prosperous—members of the Committee talks about the entire controversy to this day. Consider how he was quoted in the Chicago article:

Looking back, I had a feeling that George was not a Communist in any shape or form. But at that time, “Communist” meant somebody who would overthrow the government. It wasn’t something to be trifled with. He was arguing a principle and we were, too. I always had a very high regard for him. He was a very brilliant young man; he’s a splendid person. He’s made great social contributions. He’s mellowed and he’s a very effective teacher. He’d be a real addition to the bar. I wish he’d just reapply and get over his hangup.41

Perhaps the most troublesome feature of an approach which has reduced our differences to a “hang-up” (and mine at that) is that it is an approach which is genuinely oblivious to the effect it has, however friendly it may now consider itself to be to me personally. This man has yet to acknowledge publicly that he was dead wrong—and to try to do something about it. This is hardly a legacy for one’s children, however influential one may be—or may seem to be. I was reminded of what it can be like to be the heir of such a man by an inquiry recently made of me by a distinguished Chicago criminal defense lawyer. He reported that his father had been on my Character Committee—and he had wondered, for some time, how his father had conducted himself. He was almost afraid to learn the truth, although he did expect the best of his father. It was, I must say, a genuinely relieved son who found, upon going with me to the roster of votes, that his long-dead father had been on the right side.52

Obviously, my bar controversy looks different today from the way it did a quarter of a century ago. This may be seen in how the Chicago article was generally received. The most revealing thing is not the fact that both the magazine and I got so many favorable responses from across the country and from abroad—after all, that could be said to have been expected, considering how sympathetically my career had been presented in the article.53
What is far more revealing is that such an article could be published, and at considerable length, in a journal which is as chock full of fancy advertising as Chicago is. Whether I deserved it or not, I had become eminently respectable.54

VI.

I do not mean to suggest that there were no readers who disliked the Chicago article. But it has evidently become unfashionable for my critics to speak up at this time: too much has happened to show up the Character Committee and its supporters as simply misguided men and women who had been anything but fair.55 The only exception I personally know of, to the generally favorable public response to the article, may be found in a letter to the editor published in the February 1983 issue of Chicago. This letter came from the then-president of the Illinois State Bar Association, an attorney who practices law here in Carbondale. He was moved by the article to say:

Except for the media, the Anastaplo matter ended in 1979. If Anastaplo wants to be a lawyer he can go about it in exactly the same way that all of us who are Illinois lawyers today obtained our licenses. If he prefers to be a “martyr,” then that’s his business and not mine.56

There are several bizarre features about this position, a position which is, I believe, not representative of the bar of this State today. For one thing, it should not be assumed, as the Carbondale letter seems to do, that I myself have been trying to get something from the State bar. For another, it is rather late in the day to suggest that I should be treated like everyone else—that I should not get preferential treatment. It was precisely because I was not treated like all other applicants that my status should continue to seem so troublesome today to some in “the media” and elsewhere. What do I mean by saying that “I was not treated like all other applicants”? I mean that I was not treated (between 1950 and 1961) like others whom the Character Committee had good and sufficient reason to consider qualified for admission to the bar. Here we come to the third bizarre feature of this letter: its source. For it did happen to come from the son, nephew or cousin of a man who conducted on behalf of the Character Committee an investigation of my character and fitness a quarter of a century ago. That is, a man of the same family name, and from the same Carbondale law firm,

54. Law students even ask me to write character references for them to the Committee on Character and Fitness. See also Mr. Justice Black, supra note 1, at 1018-19 n.61.

55. In private, of course, I may still have a substantial number of detractors. See, e.g., infra Appendix XI, Item D. See also infra note 116.

56. See infra Appendix X, Items B & C. The 1979 reference is evidently to the response at that time by the Illinois Supreme Court to the initiative on my behalf by the Committee on Character and Fitness. See infra Appendix VII, Item J. See S. Illinoisan (Carbondale), April 12, 1983, at 4 (John C. Feirich’s letter to the editor).
was once asked by the Chicago Committee to visit my home town (which is ten miles from here). His inquiries on behalf of the Character Committee were made after the Committee had allowed itself to become upset by what I had dared to tell it.57

What did this local investigator (who was, if I remember correctly, then associated with the Committee on Character and Fitness here in Southern Illinois) find out about me? I have reason to believe that what he found was quite favorable to me—or, at the very least, not unfavorable. After all, I had lived for almost two decades among the townspeople he consulted, and my parents and brothers had continued to live there. I must admit I can do no more than conjecture about what this investigator found, since the Character Committee refused, despite my repeated requests, to reveal what had been reported to the Committee by this or any other investigator acting on its behalf.38 The Committee obviously proceeded on the assumption that unless the information it uncovered about me was unfavorable, such information should not be considered to be relevant evidence. The most the Committee would eventually concede, upon being pressed by me, was that it had not unearthed any evidence unfavorable to me anywhere.59

57. See Brief for Appellant, Appendix at 10, In re Anastaplo, 18 Ill. 2d. 182, 163 N.E.2d 431 (1959).
58. Justice Black commented, in his dissenting opinion, upon what was and was not in the record:

The record also shows that the [Character] Committee supplemented the information it had obtained about Anastaplo from [the required] affidavits by conducting informal independent investigations into his character and reputation. It sent agents to Anastaplo’s home town in southern Illinois and they questioned the people who knew him there. Similar inquiries were made among those who knew him in Chicago. But these intensive investigations apparently failed to produce so much as one man in Chicago or in the whole State of Illinois who could say or would say, directly, indirectly, or even by hearsay, one thing derogatory to the character, loyalty or reputation of George Anastaplo, and not one man could be found who would in any way link him with the Communist Party. This fact is particularly significant in view of the evidence in the record that the Committee had become acquainted with a person who apparently had been a member of a Communist Party cell on the University of Chicago campus and that this person was asked to and did identify for the Committee every member of the Party whom he knew.

In re Anastaplo, 366 U.S. at 106-07. Footnote 5, keyed to the word “apparently” in this quotation, has Justice Black observing, “The record shows that although Anastaplo repeatedly requested that the Committee allow him to see any reports that resulted from these independent investigations, the Committee, without denying that such reports existed, refused to produce them.”

59. The Committee chairman, on behalf of the Committee, finally made this concession:

I will tell you this. That no one has stated to this committee [orally or in writing] that you are or have ever been a communist, or a member of the Communist Party, or a member of the Ku Klux Klan, or a member of the organizations, or any one of the organizations listed as subversive by the Attorney General’s list.

Thus, the Committee conducted itself as an adversary, not as a judge—and not as an honorable adversary either. And yet the Committee could claim, and the courts could allow it to claim, that it simply could not decide whether I had established my fitness for admission to the bar.60 Why? Because I had refused to answer questions that it was not asking others—and yet, without answers from others on these or similar subjects, it was able to certify them for admission to the bar. Of course, some did point out—not the least Justice Black of the United States Supreme Court—that a principled resistance to improper inquiry should be taken as a sign of good character, not as the barrier to the Committee effort to do its duty that the majority of the Supreme Court and others self-righteously made so much of.61

The Committee claim, made again and again, that I had kept it from passing judgment on me meant, in effect, that the Committee repudiated the lawyerly integrity it should have stood for. If I am correct in this assessment, the Committee was not truly fair in the way it conducted itself. Neither the bar nor the judiciary respected the rule of law or the rules of evidence or due process of law, to say nothing of freedom of speech. All this reflects problems with the good faith of the bar—and this no doubt contributed to the suppressed anger of the Committee Secretary to which I have already referred.62

I should at once add that I do not intend to question the integrity of the Carbondale lawyer who served (in the 1950s) as a temporary investigator for the Character Committee. But what is one to make of still another Carbondale lawyer who, a generation later, can disregard what was and was not learned about my character by the local investigator (whether his father, uncle or cousin)—and how the results of that investigator were simply "covered up"? A sense of shame is not without its uses.63

60. Thus, I could on several occasions characterize Justice Harlan's opinion for the court as unlawyerlike, not the least in that it did not respond sensibly to the implications of the concession recorded by the Committee Chairman, supra note 59. See Mr. Justice Black, supra note 1, at 978, 990-991, 993-96 and 1014. See also supra note 10. Consider as well the implications of the concessions about the evidence revealed in the quotation in the text at supra note 51.
61. See In re Anastaplo, 366 U.S. at 102-03, 114.
62. See supra note 44 and accompanying text.
63. Mr. Feirich's recent troubles are indicated in the following newspaper report from Carbondale, Illinois:

A former Carbondale businessman accused of abducting attorney John "Jack" Feirich at gunpoint in a self-proclaimed citizen's arrest will be tried again on aggravated kidnapping charges . . . . A Jackson County jury couldn't come to a unanimous decision in James Russell's first trial, which ended in a mistrial after more than 12 hours of deliberations June 26 [1986].

[A]fter the mistrial was declared, the jury foreman said the panel was pretty evenly split and that the main problem had been trying to decide if Feirich had been "secretly confined" in the back seat of Russell's car on the way [from Carbondale, Illinois] to the Daley Plaza in downtown Chicago [a 300-mile trip].
Still, the Carbondale lawyer who volunteered to criticize me in his capacity as President of the Illinois Bar Association may well have represented Southern Illinois sentiment, however dubious various lawyers I have talked with elsewhere in this State find his attitude. For it is sad to have to report that I have not received, in the three decades since my trouble with the bar began, even a dozen indications of support or sympathy (orally or in writing) from the good people of Southern Illinois. A rare exception, aside from members of my family who, not without gallantry, have had to live in this

Feirich’s hands were handcuffed behind his back and his legs strapped together with tape during the incident, which occurred July 24, 1985.

Russell claimed Feirich had misdirected about $6,000 of his money to cover legal fees in Russell’s attempt to regain his half-interest in the Southern Illinois Racquet Club, but that Feirich would not provide an itemized bill of what Russell owed.

Many observers believed the case put the entire legal system on trial in the person of Feirich, a former president of the Illinois Bar Association.

“I never have figured out how I was put on trial in this case,” Feirich said the week of the trial. “It’s wrong. Russell is the man on trial here. It’s not a crime to collect a 3-year-old bill.”


Mike Royko concluded his sympathetic account of the defendant, whom he interviewed for two and one-half hours, with these observations:

Now Russell has to find another lawyer—this time to defend him against charges that he kidnapped a lawyer he thought had cheated him out of legal fees by not suing a lawyer he thought had cheated him out of his share of a business.

But I figure that if he can get a jury composed of clients, not lawyers, he’ll have a fighting chance.

Royko, The Lawyers Drove Him to It, Chi. Tribune, Aug. 9, 1985, § 1, at 3, col. 1. See also Letters to the Editor, S. Illinoisan, July 2, 1986.

On the other hand, it should be said on Mr. Feirich’s behalf that he has respectable credentials. His biography in the Illinois Bar Journal, upon his becoming President of the State Bar Association, notes that he is a third-generation lawyer as well as a sailor of considerable experience. President’s Page: Charting the Course, 70 ILL. B.J. 674, 676 (1982). He is on record as promoting development of a lawyers’ fund “which could be spent to provide legal services to the poor, scholarships for law students, for improvements in the administration of justice, etc.” The Lawyers Trust Fund of Illinois, 72 ILL. B.J. 240 (1984). It is evident from his own accounts that he is prone to making indiscreet statements and provoking controversy. See, e.g., Letters to the Editor: President Feirich Explains Background on Private Club Issue, 71 ILL. B.J. 82 (1982); President’s Page: A Six-Month Report from the President, 71 ILL. B.J. 338 (1983). Even so, his six-month progress report as President of the State Bar Association merits respect: “I have devoted an endless number of hours to the job (more than 60 percent of my total time), my income as a lawyer has been reduced drastically, and yet I have not accomplished nearly as much as I had hoped to.” Id.

64. See, e.g., infra Appendix X, Item C.
area with my reputation, has been Ben Gelman of the Southern Illinoisan.65

VII.

Of course, the failure of Southern Illinoisans, including almost all of the people I had grown up with, to respond to what I have done and have had done to me, represents more their loss than mine. This failure, even on the part of people I had once considered myself close to, was not due to any malice or ill will on their part, but was due rather to their timidity and their lack of understanding. Others who understood the situation better—including scholars, editorial writers, and various organizations across the country—have been kinder (to themselves as well as to me) in their responses to my case.66

65. Mr. Gelman, who had a regular column in the Southern Illinoisan, discussed my matters on a number of occasions during the past decade, including the following: George Anastaplo would rather leave writings than a fortune, S. Illinoisan, Dec. 30, 1984, at 33; Anastaplo’s ‘Artist as Thinker’ might well be ‘Reader as Thinker’, S. Illinoisan, Jan. 22, 1984, at 31; Anastaplo’s 1951 bar application is back to state supreme court, S. Illinoisan, Aug. 21, 1983, at 22; Anastaplo’s legal vindicaton sparks national debate, S. Illinoisan, Mar. 28, 1979, at 3; Anastaplo’s stand for freedom vindicated after 28 years, S. Illinoisan, Feb. 6, 1979, at 3; What’s Really Wrong With George Anastaplo? S. Illinoisan, April 14, 1976, at 3; George Anastaplo writes about virtue, freedom; but first . . . who is this George Anastaplo? S. Illinoisan, April 11, 1976, at 3. See also his columns in the Southern Illinoisan on January 18, 1976, February 18, 1979, April 1, 1979, and December 12, 1982. One of these columns discusses the Chicago article, beginning with these observations:

It would not surprise me if the word “anastaplo” appeared in the new edition of a dictionary in a few years, spelled with a small “a”.

The definition would read something like this: “A person who stands steadfastly upon his or her principles, despite prolonged pressure, and who therefore has been deprived of a career he or she otherwise would have enjoyed; hence, anyone who stubbornly sticks by his or her convictions regardless of the consequences.”


My letter to the editor, published in the Southern Illinoisan, December 23, 1982, was partly in response to something Mr. Gelman said about the right of revolution in his column. The opening paragraphs of my letter read:

I found most intriguing, in Ben Gelman’s generous column of December 12 about my bar admission controversy, the suggestion that the English language should be permanently enriched by my experience with the Illinois bar authorities. Of course, this would be far more recognition than even I ever dared hope for.

In any event, it may be salutary to remind your readers that I argued, from the beginning of my encounter (in 1950) with the Committee on Character and Fitness, that a belief in the right of revolution (as set forth in the Declaration of Independence) is consistent with, if not even required by, support of the Constitution of the United States.

66. Press discussions of my bar admission matter in recent years include the following: Well, Anastaplo: Greed top threat to law professor, S. Illinoisan, March 7, 1984, at A3, col. 1; Gilas, Prof, court at impasse on ‘51 license refusal, BAR LEADER (ABA), Jan.-Feb. 1984, at 12; Kotlowitz, George Anastaplo a Man of Principle, U. CHI. MAG., Winter 1984, at 7; Judicial
Consider, for example, the quite generous response of the Chicago lawyer who succeeded your Carbondale lawyer as President of the Illinois State Bar Association. This is how he understood the situation. He reported last


Press discussions of my bar admission matter in earlier years are collected in the various materials cited supra note 1.

67. See infra Appendix XI, Item F; Appendix XII, Item A. The biography of Albert F. Hofeld, upon his becoming president of the State Bar Association, may be found at 71 Ill. B.J. 638 (1983).
summer that a “special committee of the State Bar [had] studied the Anastaplo matter several years ago.” He further reported, “Mr. Anastaplo told the committee at that time that he did not choose to ask [the Illinois Supreme Court] for something he felt was wrongly denied him, and he asked the State Bar not to intervene on his behalf.” Therefore, the current President said, “the Illinois State Bar Association is asking the Supreme Court to take the unusual step of reversing its previous action.” He explained, “It is obvious that a mistake was made. [Mr. Anastaplo] may choose to ignore this gesture, but we feel the record should be corrected, publicly, and that Mr. Anastaplo need not return to the Court and ask it to reconsider its previous action.”

All this was said and done in July 1983, at which time the Illinois State Bar Association asked the Illinois Supreme Court to reconsider its decision of the 1950s which denied me a law license.

I myself still do not know fully what happened. I believe that the first I knew of this unprecedented move by the Illinois State Bar Association was when I received in late July 1983 a telephone call from a reporter with the Chicago Daily Law Bulletin who had just read a copy of the Illinois State Bar Association press release about this development. It is important to notice, in order to understand what happened, that I was not a party to the 1983 activity directed to the Illinois Supreme Court—and so I again and again received my information about it the way the general public did, from the press. This is related to my longtime opinion, that it is better that my bar admission status remain as it has long been. This opinion was repeated several times in the course of various interviews last year, when reporters asked me what I thought of what was going on. And so I could be quoted in the National Law Journal to this effect: “It has long been my opinion that my exclusion from the bar should be left alone. My exclusion serves as a salutary reminder of what can go wrong when the bar, the law schools and the judiciary do not conduct themselves as they should.”

VIII.

It came to be assumed in the press, and among readers of the press, during August and September of last year, that the Illinois Supreme Court would

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68. See infra Appendix XI, Item F.
69. See infra Appendix XI, Item E.
70. See infra Appendix XI, Items A, B, & C. Elmer Gertz, a longtime supporter of mine, was prominent in this development.
71. See infra Appendix XI, Item F.
go along with the July 20, 1983 bar association recommendation. I, however, believed otherwise and said so whenever I was asked. My prediction proved correct. But then I appreciated more than did most people the temperament of the Court. I also appreciated the conditions I had repeatedly insisted upon laying down for my response to anything the Court might do. I had, in a letter to the Illinois Supreme Court on August 8, 1983, reminded the Court of the posture I had adopted six years earlier when the Character Committee itself had, on its own motion, reversed its predecessors and recommended to the Court my admission to the bar.\footnote{73} I had indicated in 1977, and repeated in 1983, that "the only action by the [Character] Committee and the Illinois Supreme Court I could take seriously was one that placed clearly on the record whatever invitation the bar authorities held out to me."\footnote{74}

I went on to say what I meant by the position I was taking about a proper record:

I have been excluded from the Illinois bar for more than a quarter century on the basis of extensive condemnations spread on the public record (at 3 Ill. 2d 471 [1954], 18 Ill. 2d 183 [1959], 366 U.S. 82 [1961]). Any official action now worthy of respect would have to be one which made it clear, to anyone consulting the Illinois Reports, that the bar of this State had reconsidered my matter on its own motion, that the actions theretofore by the Character Committee and by the Illinois Supreme Court had been repudiated, and that I had been invited to take the constitutional oath as an attorney. Thus, it should be made evident, to anyone who consults thereafter the standard guides to citations (such as \textit{Shepard's}), what had happened to my matter and how. Otherwise, a misleading, if not even disturbing, ambiguity would result from my admission to the bar.\footnote{75}

Not only does my position go back to the late 1960s, it is also a position implied in my 1961 leavetaking letter to the Illinois Supreme Court.\footnote{76} And so last summer I several times said, in response to questions from the press, that I would not cooperate in being admitted quietly off the record when I had been excluded so noisily on the record.

I also made it clear last summer that anything the Illinois Supreme Court now said would have to be regarded by me as no more than an "invitation"—and this I insisted upon because I did not want the Court to be embarrassed by the response I might (or might not) make to any "favorable" action on its part. It is likely, of course, that the Court was not comfortable with my attitude, since here was a "victim" called to its attention who not only was

\footnote{73. See infra Appendix XI, Item G.}
\footnote{74. See infra Appendix XI, Item G. See also Appendix VII, Items C & H; Appendix IX, Item A(ii).}
\footnote{75. See infra Appendix VII, Item D.}
\footnote{76. See infra Appendix II. See also supra note 28; notes 1 & 13 to the appendices.}
not asking for or wanting anything from it, but who even reserved the right to pass judgment on whatever the Court might do to correct itself.  

I recognize that an attitude such as mine can appear arrogant—but I was only trying to be honest with the Court. So I said in my letter of August 8, 1983 to the Chief Justice: “I trust that nothing I say here, or that I have said elsewhere, is interpreted as intending in any way disrespect for your Court. And I do appreciate the efforts made on my behalf by public-spirited citizens from time to time. But I do believe I owe it to your Court to state once again where I stand in this matter.” I closed this August letter with these words, “Permit me . . . to reaffirm still another sentiment I have expressed from time to time: should your Court ever decide that it can make use of my services in any way, I would be glad to do what I properly can to contribute to the administration of justice in this State.” The stage was now set for the final act of the 1983 revival of my bar admission drama.

The final act began with a letter of October 11, 1983 by the Chief Justice of the Illinois Supreme Court to the Illinois State Bar Association. The letter began with this observation: “The Supreme Court has considered your letter of July 20, 1983 concerning George Anastaplo. Your request was extremely unusual in that nothing was filed with the court and the requested action came simply in the form of a letter. This case has been closed for more than twenty years. I know of no accepted procedure that would authorize proceeding in such a manner. In effect, there is nothing pending before the court upon which it can act.” The Chief Justice concluded a review of the history of the case with these words, “Mr. Anastaplo’s case has been considered by [this] court twice and by the United States Supreme Court. There must be finality to litigation and the court has previously indicated that there is nothing pending before this court upon which it can act. If Mr. Anastaplo desires to refile his petition for admission to the bar, the same will be processed as is any other petition of similar nature.”

77. See Appendix XI, Items G, H, & I. On October 12, 1977, one of my sturdiest supporters wrote another friendly lawyer upon seeing my September 26, 1977, letter to the Chairman of the Committee on Character and Fitness:

Perhaps you have already seen a counterpart of the enclosed letter from George Anastaplo about his admission to the bar. With the election of the two new members of the Illinois Supreme Court, I think I could interest the Chicago Council of Lawyers in asking for George’s admission. What appals me, however, is the implied expression in the letter that if the Supreme Court would simply order his admission now, George would impose conditions which might seem to the judges to stultify them, and that the disclosure of such a prospect might doom our efforts. I would appreciate your best opinion.

See infra Appendix VII, Item E. Evidently the troubled writer of this letter was sufficiently reassured to be able to write to the Chairman of the Committee on Character and Fitness two days later, suggesting that it was “the clear duty of the committee to issue a certificate of character and fitness” and offering to file an affidavit in support of the proposition that my “character and fitness for admission to the bar are simply beyond all possible question.”

78. See infra Appendix XI, Item G.

79. See infra Appendix XI, Item J. See also infra Appendix VII, Item J.
Once again, I first learned of a new development from the press. I repeatedly make a point of this to remind you that I was not considered a party to what was going on. In any event, the Court could insist there was nothing before it—and the Chief Justice, when later asked about the matter during a radio broadcast, said much the same, adding the observation that I obviously preferred to be a martyr.80 I am not sure what he and others mean by this. “Martyr” literally means a “witness”—and hence a teacher of some truth. Perhaps I am a martyr in this sense—but not in the sense often used today, of one who likes to be persecuted and punished. The tone of the Chief Justice’s comments tends to overlook the simple fact that I personally have had little if anything to do with the efforts on my behalf in the Illinois Supreme Court since 1965—except to restate my somewhat tiresome stand-offish, wait-and-see position.81

IX.

As a legal scholar, however, I am intrigued by the repeated insistence of the Illinois Supreme Court that there is nothing before it upon which it could act. There can be no serious doubt that the Court could, at any time, act on its own initiative to correct its mistakes in such a matter, especially since my original application never has been withdrawn by me and since there are no adverse parties whose interests might be prejudiced.82 A distinguished member of the Court has so argued, or so it seems from the October 11, 1983 letter of the Chief Justice that concluded with this sentence: “Justice Seymour Simon is of the opinion that the court should reconsider its previous decision and admit Mr. Anastaplo to the practice of law.”83

My response to this “last act” may be found in an interview of me drawn upon in the Chicago Daily Law Bulletin. This is how the Law Bulletin reporter put it:

Though Anastaplo does not claim to be a martyr, he obviously still believes nearly 30 years later that he was a victim of serious injustice. Justice Seymour Simon has registered his belief, according to [the Chief Justice’s] letter to the bar, that Anastaplo should be admitted to practice. [Anastaplo said about this,] “Justice Simon is to be congratulated for once again showing the good sense that people have come to expect of him.”

The rest of the justices could have decided to take action, Anastaplo believes. “This is not like a regular judicial proceeding where you have

80. See also infra Appendix X, Item B.
81. See supra note 28; see also notes 1 and 13 to the appendices. It should be emphasized that much of my account in this Carbondale talk and in these notes depends on files and recollections that range across at least two decades. See also supra note 29.
82. See infra Appendix VII, Item A. See also Bradwell v. Illinois, 55 Ill. 535 (1869), 83 U.S. (16 Wall.) 130 (1873); Mr. Justice Black, supra note 1, at 984 n.2; Gale, Myra Bradwell: The First Woman Lawyer, 39 A.B.A. J. 1080 (1953); Note, 28 AM. L. REV. 278 (1894).
83. See infra Appendix XI, Item J.
[adverse] parties. With this kind of litigation, it [is] highly questionable that [the standard procedural reasons for not proceeding] are so serious," he said . . . . "The [Chief Justice's] letter, as it's put, strikes me as symptomatic of what we see around us. We're determined to stay in [countries] where we really don't want to be because an artificial issue has been created."

Elsewhere in the same article the reporter has this to say about my response to the Chief Justice's letter:

Anastaplo says that [this] kind of institutional "rigidity" resulted in the protracted war in Vietnam and threatens current foreign policy in Lebanon and elsewhere. Once a mistaken decision is made involving pride, Anastaplo says, it is hard for government officials to retreat and rectify past blunders.4

All this is found in an article for which the newspaper supplied a headline, "Anastaplo not bitter." I hope it is true that I am not bitter, for I continue to believe that much is to be said for leaving things just as they are now, at least during my lifetime. What is done about me posthumously, I leave to others to worry about. One public comment I have made on this aspect of the subject is that "a posthumous rehabilitation of me would probably be most instructive."46 And I have presumed to add the suggestion, "Such rehabilitation could well include the establishment of an annual lecture in my name at the University of Chicago Law School, preferably [to be delivered] by a judge of stature, as a reminder of how even 'the best and the brightest' can give in to fear and ignorance."47 This is something that the prosperous lawyers who destroyed my career at the bar could properly finance.

Be all this as it may, the Illinois Supreme Court's October 1983 letter helped close out the current revival of my bar admission controversy. The Court displayed itself as being unable to respond to the highminded appeal made by the Illinois State Bar Association. Perhaps this is as much due to lack of imagination as to anything else. No doubt, the Court did the best it knew how to do in the circumstances.

What is apt to happen now? I suspect we have seen the last of such efforts with the Illinois Supreme Court in my lifetime. True, the Chicago Bar

85. Id. See also supra note 41.
86. See infra Appendix XII, Item B.
87. Id. See also infra Appendix VII, Item L ("to remind law professors of how they should behave when their students are being harassed"). "When asked what tangible 'reward' I want for my [1967-1974] services as a Philhellenic against the Colonels, I have replied that I would settle for having a street in central Athens named after me. A small street would do, especially if it is one which my children's children can conveniently find." HUMAN BEING AND CITIZEN, supra note 25, at 231 n.7. See also PLATO, APOLOGY 37A. (My discussion of the Apology may be found in HUMAN BEING AND CITIZEN, supra note 25, Essay No. 2.) See also infra Appendix XII, Item C.
Association has yet to do anything—but it is difficult to see what it could add, so long as the composition of the Court remains the same, to what the Chicago Council of Lawyers, the House of Representatives of the Illinois General Assembly, the Illinois State Bar Association, and the Character and Fitness Committee itself have tried to do.88 I myself hope to continue teaching jurisprudence and constitutional law in the Loyola School of Law and to continue conducting seminars in the adult liberal education program of the University of Chicago.89 I also hope to continue writing on a variety of legal and non-legal subjects, especially since I do have a half-dozen more books contracted for with my publisher.90 There is little more to say about or to do with my bar admission matter: that is essentially finished. Publicity about it will taper off, perhaps until another generation rediscovers it in a slow news season a decade or so from now.91

I do hope, of course, that the matter remains a challenge to future lawyers and teachers of law. I remind you that Justice Black did leave instructions, which were followed in 1971, that a passage from his dissenting opinion in my case—that magnificent dissenting opinion by a great judge—be read at his funeral in the National Cathedral in Washington.92 This sort of thing

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88. See infra Appendices VI, VII, VIII & XI.
89. My adult education seminars, at the University of Chicago and The Clearing, have contributed considerably to my education and hence to the development of my articles on the Confucian Analects, on the Bhagavad Gita, and on the Gilgamesh Epic in the 1984, 1985, and 1986 volumes of Great Ideas Today. (An article on the Constitution, entitled We, the People, is scheduled for the 1987 volume, and an article on the Koran for a later volume.) Those adult education seminars are reflected as well in Artist as Thinker, supra note 4.

91. I have thought before that nothing more would happen—and I have been wrong. See infra Appendix VII, Item L.
92. See Order of Service: Hugo LaFayette Black, September 28, 1971, reprinted in Memorial Addresses and Other Tributes in the Congress of the United States on the Life and Contributions of Hugo LaFayette Black, H.R. Doc. No. 236, 92d Cong., 1st Sess. 64-65
does give me some reasonable ground for hoping that my bar admission matter will prove instructive for generations to come.

X.

I begin to conclude by briefly considering various questions I am asked about the matter from time to time:

*Was it worth it?* Certainly, there was a considerable financial cost—for me directly, and indirectly for my Southern Illinois family. I have made, during the past thirty-five years, several million dollars less than some of my more successful law school classmates. But, on the other hand, if I had had a conventional career at the bar, I probably would not have learned and written the things I have—and I would much rather leave those writings behind than any fortune. So the simple answer to the question, “Was it worth it?” must be, “The right thing should always be worth doing for its own sake.”

The next question: *Did it do any good?* I believe so. The fact that I am occasionally asked to talk about it, as I am doing tonight, suggests how instructive my bar matter can be. I know that over the years a number of

(1972):

Now hear in Justice Black’s own incisive words, his distillation of the wisdom of the ages as he applied it to American jurisprudence. Some are from his lectures; some from his dissenting opinions; others when he spoke on behalf of the Court. All now belong to what we may proudly call the great American tradition.

“If we are to keep faith with the Founders of our Nation and pass on to future generations of Americans the great heritage of freedom which they sacrificed so much to leave to us . . . we must return to the original language of the Bill of Rights. We must not be afraid to be free.” *In re Anastaplo*, 366 U.S. at 116 (Black, J., dissenting).

Two of my children were present in the National Cathedral for this funeral service. See *Mr. Justice Black*, supra note 1, at 977 n.1. See also supra note 38.

93. Particularly relevant here is Lesson VI of the “Lessons from Life” which I developed in a talk at the University of Chicago Law School, May 13, 1986:

I. Be careful about the lessons you dispense.

II. Rarely use an elevator for less than five floors.

III. Take a nap every afternoon.

IV. Dismantle your casebooks.

V. Keep your food simple.

VI. Do not devote your career as a lawyer to anything you would not do if you were not being paid for it.

VII. The middle way is likely to be best.

VIII. One should, as a lawyer, make a determined effort to practice law.

IX. One should so conduct oneself as to be worthy of trust.

X. One should try to be a student all one’s life.

XI. One should read real books.

XII. One should remain open to greatness.

XIII. One should ask the obvious questions.

94. See infra Appendix XII, Item A. On the other hand, I have never discussed my case in any of my own classes.
young lawyers, and students of law, have been challenged by it in a useful manner. I do have the impression that I have thereby contributed more to the community than I could ever do as a flying officer during my military service or than I could ever have done as a practicing lawyer the last three decades. For one thing, I have posed some soul-searching questions for the bar and law schools (as well as for myself) to think about with respect to the meaning of law and with respect to the nature of lawyers. That this has not been without effect may be seen in the thoughtful things that the current President of the Illinois State Bar Association has said about this entire matter. He could say in response to the Chief Justice's August 1983 letter, "I am disappointed from a moral standpoint because I had hoped they would correct what I think everyone perceives as a wrong."95

The final question: What is going to happen now? To me personally? Nothing is likely to happen—certainly, nothing is needed. Whatever posthumous rehabilitation takes place should not be for my sake, of course, but for the sake of a community very much in need of reminders that self-interest is not all that one should be guided by, however important a proper concern for self-interest is. Some people see my continued exclusion from the bar as an indication that "McCarthyism" continues. I do not believe so. Nor do I see it as likely that there will be a revival of such self-destructive repressiveness in our present circumstance.96 A far greater danger—even more serious than the ugly repressiveness of the 1940s and 1950s—is the determined denial of standards by which to judge ourselves and others.97

The critical problem in this country today is not the influence among us of unseemly fear but rather the influence among us of an inordinate greed. There is, of course, something demeaning, and paralyzing, about being unduly fearful—and this could be seen in how Americans responded to "the Communist threat" a generation ago. We tried to repudiate the best and the noblest in our heritage in order to defend ourselves—and we only made ourselves weaker in the process.98 It is important to make a constant effort to know and to live in accordance with what is truly to be feared: what is most to be feared is not subversion or death or deprivation but rather vice and ignorance and a failure to respond to the challenge of the noble and the just.99

97. See infra Appendix IX, Item A(iii). See also infra note 103.
99. Of course, sometimes the proper response is to say nothing. Consider the opening paragraphs of an article by Hilja Pirat, Two Men, Two Approaches to One Profound Profession, Lerner Newspapers, May 6, 1986, § 1-A, at 20:

In the last constitutional law class of the semester at Loyola University Law
But, as I have said, it is greed more than fear that we have to contend with today. There is something demoralizing about pervasive greed. Its influence can be seen in government policies, especially with respect to how the poor should be talked about and dealt with.\(^\text{100}\) It can be seen in the constant distortion of the far-too-influential broadcast media by commercial considerations: I still find it remarkable how much selling goes on around us, how much it shapes what we see and hear and do.\(^\text{101}\) The influence of greed can also be seen in what has been happening to the practice of law—in the way the best law school faculties and the most prestigious law firms conduct themselves, and in what law students all too often come to expect. Obviously, we need to reconsider what is truly to be desired.\(^\text{102}\)

XI.

A key problem for us—whether a generation ago or today—is how various things are to be understood: even the status and consequences of understanding need to be thought about more than they are. One critical difficulty I personally have had, decade after decade, is having to deal with people (both in this country and abroad) who do not know what they need to know in order to know enough upon which to act sensibly. An illustration of this a generation ago was the repeated failure of the bar, the courts and others to face up to the evidence available and to the arguments made in my bar admission matter.

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100. I had occasion to say the following about Liese Ricketts, in her capacity as Township Supervisor for Crete, Illinois (September 28, 1984):

Mrs. Ricketts has that priceless asset of the sound politician, the unerring instinct for doing the right thing. This is particularly important at a time when too many prominent politicians can seem self-centered and mean-spirited. Her tireless efforts to relieve the needy, even as she faithfully serves her more comfortable constituents, testify to her humanity and her sense of duty. She shows, both in word and deed, that she is in the spirit of the greatest conservative politician of this century in the English-speaking world, Winston Churchill—for it was he who could say, in the middle of a great war, "There is no finer investment for any community than putting milk into babies." How different is this in spirit from what one hears from many so-called conservatives today

See also HUMAN BEING AND CITIZEN, supra note 25, at 260 n.52.


A failure in understanding—including an understanding of the conditions and limitations of understanding—may be seen in the suspicion directed among us at enduring standards and at traditional natural-right teachings. This bears upon how even constitutional documents are read. I remind you that at the heart of my initial difficulties with the Committee on Character and Fitness in 1950-1951 was my defense of the right of revolution as recognized in the Declaration of Independence. The right of revolution does presuppose that there are enduring standards by which the doings of communities and governments may be judged. This is well to keep in mind in a totalitarian age when moral relativism, permissiveness and hedonism have become so fashionable (and so crippling) in the liberal democracies.

Only if there are enduring and honorable standards may a community make sensible decisions and may a human being become what he can and should be. Only if one is aware of enduring standards, may one be able to benefit properly from the good fortune of being confronted by certain kinds of challenges. This means that one can “grow up” in response to such challenges, moving from reliance upon one set of teachers and peers to another set, until one comes routinely to take one’s bearings by the opinions of the very best. To be able to do this properly, one must develop and have a fairly considerable, and a well-founded, confidence in oneself. One learns what and who really matter. One learns that there are limitations in any reliance upon one’s “accidental” associations, whether they be one’s family, or the community and friends of one’s youth, or even one’s teachers. Indeed, one must wonder whether maturation consists in large part of shucking off more and more of the physical—the physical as manifested in a concern for the social and psychic consequences of one’s appetites, circumstances and attachments.

Maturation, in this sense, may seem to some a severe deprivation, if not even a form of callousness—for it can mean that one is to a considerable extent on one’s own. Or, as it has long been noticed, the sovereign is a lonely man. But the truly good man does have as his companions the best men and women of other times and places: that should be reassurance, and company, enough for the man who truly knows who he is and what he is doing and saying.


104. See infra Appendix IX, Item A; Appendix XII, Item A.

105. See Character and Freedom, supra note 36.

106. Compare Friedrich Nietzsche’s “eternal return,” which reflects a radical affirmation of the physical (in the form of one’s body and its cyclical “history”).

107. See the concluding paragraphs of Anastaplo, In re Anastaplo: A Progress Report, Nat’l L.J., June 18, 1979, at 33. See also L. ARNHEART, POLITICAL QUESTIONS: POLITICAL PHILOSOPHY
This is what the well-constituted human being can aspire to. Much of wisdom consists in being clear about what does not matter, be it reputation or wealth or the approval of one's fellow-citizens when they are not true to themselves. But what about the community itself—what should it strive for? It should strive to nurture and respond to the exceptional man when he does happen to appear. Democratic communities, we have been taught, are particularly prone to envy. They must take special care, for their own sake, not to permit a majority intolerance of dissenting opinions, especially those challenging dissents which appeal to and nourish the best in a community.

XII.

We have moved in this country during the past century from a yearning for nobility to an appetite for celebrities. Nobility, whatever its limitations—and limitations it can have, especially its disregard of justice in some situations—nobility is more political in its orientation. The appetite for celebrities is much more concerned with an indulgence in intimacy, as may be seen in the public exposure of the private lives and the excesses of "individuals" who are accidentally "famous" for a season or two.

One further quotation from the 1983 revival of my bar admission drama should suffice to indicate how one might begin to consider the status of the noble among us.

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108. "One must not blind oneself to the fact that democratic institutions most successfully develop sentiments of envy in the human heart." A. de Tocqueville, DEMOCRACY IN AMERICA 198 (1969).

Although [Cicero] was intemperately fond of his own glory, he was very free from envying others, and was, on the contrary, most liberally profuse in commending both the ancients and his contemporaries, as any one may see in his writings. And many such sayings of his are also remembered; as that he called Aristotle a river of flowing gold, and said of Plato's Dialogues, that if Jupiter were to speak, it would be in language like theirs.


109. See Plato, APOLOGY at 30D-31C.

110. "Celebrity's the vengeance of the unfamous. They turn the famous into stage settings. It's a way of paralyzing them." R. Stern, NATURAL SHOCKS 17 (1978). See also Anastaplo, Legal Realism, the New Journalism, and 'The Brethren', 1983 DUKE L.J. 1045.

111. See THE CONSTITUTIONALIST, supra note 1, at 798-99 n.32.

The prominent and remarkably prosperous Chicago lawyer whom I have already quoted chaired my bar admissions hearings in the late 1950s. In September 1983, he appeared on a National Public Radio broadcast about the case. Among the things he said then were the following:

When the hearings concluded [in 1958], I said, "Mr. Anastaplo, do you have anything further to say? I'm about to terminate the hearings." And he stood up and said "I do have one final thing to say. After listening to you gentlemen for six weeks, I've concluded that the bar of Illinois needs me more than I need it." And he turned on his heel and walked off. I don't think I saw him [again] maybe for ten or fifteen years.113

Whether or not this dramatic account of our last official encounter is fully accurate, it does effectively suggest how the Character Committee and I came to regard one another.

XIII.

The question remains, of course, whether it is still true, assuming it was true then, that the Illinois bar "needs me more than I need it."114 The best evidence I have in support of the proposition that I am not really needed these days is the fact that the Illinois State Bar Association could take the action it took in the summer of 1983. This action included the following explanation by its then President: "'We believe that [Mr. Anastaplo] should not have been denied a license because of his principled refusal to answer [the] questions [he did]. We are not taking this action for [his] sake, but for the sake of the legal profession, which should be able to admit past mistakes and hold its head high.'"115

113. See infra Appendix XII, Item A. See Stewart, Major Banks Loosen Links to Law Firms, Use In-House Counsel, Wall St. J., April 26, 1984, at 1, col. 6 (on Mr. Stephan's recent troubles).
114. Should not the same be said about my relations with the University of Chicago? See infra Appendices IV & V. "There began in 1950 a struggle for the soul of the [University of Chicago] Law School—and with the departures of William W. Crosskey, Harry Kalven, Malcolm P. Sharp and Roscoe T. Steffen, the long-dominant 'realists' were finally in virtually complete control. But hollow men can have no more than hollow victories." Mr. Crosskey, supra note 38, at 260 n.220. A prominent alumnus of the Law School wrote to me after Malcolm Sharp's death, "I know that he stood virtually alone among the faculty in supporting you in your lonely vigil to preserve the integrity of the Constitution as it related to admissions to the bar." See supra notes 45, 50, & 56. See also Appendices, note 4.
115. See infra Appendix XII, Item A. See also infra Appendix VII, Item I. I have had occasion to acknowledge "the determined decency of Richard James Stevens." Infra Appendix A, Item A(ii).

On my attempts to secure direct admission to the bar of the United States Supreme Court, see THE CONSTITUTIONALIST, supra note 1, at 408-16. See also Chief Justice Burger's observation, In re Rose, 71 L. Ed. 2d 863 (1982) (memorandum opinion):

As I have stated with respect to other applicants, determination of whether an applicant appears "to be of good moral and professional character" is a matter for this Court to decide independently; it is not a matter in which we should casually and routinely "rubber stamp" the actions of a State.

Id. (Burger, C.J., dissenting).
Such a public statement by a man in this kind of position would have been virtually impossible a generation ago.\textsuperscript{116} Whether I contributed to such a raising of the sights of the Illinois bar I must leave to others to decide. What I can admit, and am glad to admit, is that the Illinois bar may no longer need me. I am not yet prepared to say the same, however, about the Illinois Supreme Court or, indeed, about the United States Supreme Court.\textsuperscript{117}

\textsuperscript{116} The quite different temper of the time a generation ago is indicated in my observations a decade ago:

My case is itself a monument to the sorry judgment, if not the pusillanimity, of my own law school faculty. Had they stood up as they should have in 1950-1951, or at least in 1957-1959, for one of their top students, about whom they knew nothing discreditable, the Character Committee would probably have given in. Instead, the law faculty not only ran for cover but even pressed their troubled students to do so as well. Thus, four faculty members (Walter J. Blum, Allison Dunham, Soia Mentschikoff and Sheldon Tefft) could publicly warn, in a memorandum of Feb. 7, 1952, "that a student who feels that he would not be willing to answer such inquiries [about his views on Communism or about any affiliations with the Communist Party] would be well advised to consider now rather than later whether he can best serve his ideals by continuing his education in law." One can see here the sort of attitude that the young rebelled against in the 1960s.


A refreshing contrast is provided by the letter to Elmer Gertz from Judge George N. Leighton, United States District Court, Northern District of Illinois, published in the Decalogue Journal:

\textit{I agree with your editorial [in the Spring 1983 issue] concerning George Anastaplo. As you know, I was one of the minority [on the Committee on Character and Fitness] that voted to admit George Anastaplo to the bar of Illinois [in 1959]. I would join in such a vote today. In fact, if at any time you wish to submit a petition to the Supreme Court of Illinois urging the admission to our bar of George Anastaplo, I will be glad to join you.}

Decalogue Journal, Summer 1983, at 8. An article about me in a Rochester, New York, newspaper, based upon a local interview of me, concludes with this paragraph:

\textit{As I asked whether he had supported Communism, Anastaplo said, "Here it is 35 years after I first tried to get admitted to the bar. I didn't tell them (the courts and the character committee members) then. Why should I tell you now?"

James, Banned from law, he found a new calling, Democrat and Chronicle, Oct. 7, 1985, at 4B, col. 1.\textsuperscript{117} See Apologia, supra note 26, at 329-30.}
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Introduction to the Appendices

Significant documents generated by my bar admission matter from 1950 to 1961 are to be found in the Briefs and Records filed in the Illinois Supreme Court and in the United States Supreme Court. These are the materials upon which various majority and dissenting opinions in those courts with respect to my application are based. See In re Anastaplo, 3 Ill. 2d 471, 121 N.E.2d 826 (1954), 348 U.S. 946 (1955), 349 U.S. 908 (1955), 18 Ill. 2d 182, 163 N.E.2d 429 (1959), 366 U.S. 82 (1961), 366 U.S. 869 (1961). Some of these materials may also be found in an appendix to my first book, *The Constitutionalist: Notes on the First Amendment* (Dallas: Southern Methodist University Press, 1971), which includes an extensive bibliography of materials and discussions relating to my bar admission matter.

Developments since 1961 are reflected in the documentary history of petitions, resolutions, minutes, correspondence, lectures, articles, and press reports collected in these appendices. These relate not only to my standing at the bar but also to my academic career, especially since my fortunes at law very much limited my possibilities in the academy. Particularly important for my academic career was the obviously unfriendly response of my law school faculty (at the University of Chicago) and subsequently of the University of Chicago administration to my bar admission controversy. On several occasions I have been proposed by interested faculty members for a regular academic appointment at the University of Chicago.

Indicative of the difficulties I have had to confront in the academy is the obstacle one of my sponsors at the Loyola University School of Law had to overcome a few years ago when he urged that I be hired. "If he is as good as you say he is," my sponsor was asked by colleagues on that law faculty, "why has not the University of Chicago hired him long ago?" This perfectly sensible inquiry required a no doubt tiresome description of the hostility over the years of leading members of the Chicago law school faculty, and especially of a vigilant dean who went on to become provost and then president of the University of Chicago. I am told that my sponsor concluded his successful advocacy with the challenge to his colleagues, "We have an opportunity to show the University of Chicago what a real law school can do."

I believe that the materials collected in these appendices provide a reliable account of what has happened with, and because of, my bar admission status since 1961. There are other petitions and related documents of a similar character that I do not have, perhaps others that I do not even know of. (I have asked various official bodies and involved lawyers for access to their files on this subject. The files I have examined encourage me to believe that I do have most of what is available.) One can see in these appendices how various statements built on their predecessors, whether petitions, letters or judicial responses. Indeed, this array of materials provides an instructive account of
"the judicial process" at work. In such an account it is inevitable that there be bulk, considerable detail and repetition.

Particularly repetitive are my half-dozen letters to the Illinois Supreme Court, starting with the letter of October 13, 1961, reprinted in Appendix II. I could not count upon any of my earlier letters to that Court being available to the Justices over the years, since there has never been the slightest acknowledgment to me from the Court of the receipt or filing of any of the various letters to the Court collected in these appendices. In any event, there can be seen in such letters my determination to retain some control over what was happening, and over what was being done to me.

The items collected in these appendices are, unless otherwise indicated, printed in their entirety. (Typographical errors and a few minor stylistic slips are silently corrected. Headings for documents, salutations in letters and signatures are usually omitted, as are indications of enclosures and multiple addressees.) The words and phrases in brackets are added by me on this occasion; but the dates and citations in brackets are usually in the originals. None of the notes found in the appendices were originally in the items collected here.

I am grateful to the editors of the DePaul Law Review for this opportunity to provide students of law, in an Illinois law review, so extensive a collection of materials illuminating some ramifications of one modest episode of the Cold War.

APPENDIX I (1950-1961)

Chronology of Anastaplo Bar Admission Litigation, 1950-1961

First Round

Original application of George Anastaplo for admission to the Illinois bar filed (in Chicago, Illinois) with the Committee on Character and Fitness for the First Appellate Court District of Illinois October 26, 1950 Committee on Character and Fitness conducted hearings (in two sessions) November 1950/January 1951 Committee on Character and Fitness refused (without any explanation) to issue a certificate of satisfactory character and fitness (Commissioner Love, dissenting) June 5, 1951 Committee on Character and Fitness was required by the Supreme Court of Illinois to issue a report explaining its 1951 decision April 19, 1954 Supreme Court of Illinois refused (unanimously) to reverse the Character Committee's ruling September 23, 1954 Supreme Court of the United States refused to review the Illinois decision (Justices Black and Douglas, dissenting) February 28, 1955 Supreme Court of the United States denied both a petition for rehearing by George Anastaplo and a motion seeking the admission of George Anastaplo to its own bar April 11, 1955
Second Round

Supreme Court of the United States announced its decisions in the bar admissions cases of *Schware v. Board of Bar Examiners of New Mexico* and *Konigsberg v. State Bar of California* May 6, 1957

Petition for rehearing of his application for admission to the Illinois bar filed by George Anastaplo with the Committee on Character and Fitness May 15, 1957

Committee on Character and Fitness refused to grant a rehearing (Commissioners Rothschild and Sawyier, dissenting) July 2, 1957

Supreme Court of Illinois ordered the Committee on Character and Fitness to allow a petition for rehearing and to hear evidence relating thereto September 17, 1957

Committee on Character and Fitness conducted hearings (in six sessions) February-May 1958

Committee on Character and Fitness again refused to issue a certificate of satisfactory character and fitness (Commissioners Carey, Christianson, Hastings, Leighton, Rothschild and Sawyier, dissenting) April 9, 1959

Supreme Court of Illinois again refused to reverse the Character Committee's ruling (Justices Bristow, Davis and Schaefer, dissenting) November 19, 1959

Supreme Court of the United States agreed to review the Illinois action May 2, 1960

Supreme Court of the United States heard oral arguments in the bar admission cases December 14, 1960

Supreme Court of the United States refused to reverse the Illinois decision and also denied a motion seeking the admission of George Anastaplo to its own bar (Chief Justice Warren, Justices Black, Brennan and Douglas, dissenting) April 24, 1961

Supreme Court of the United States denied a petition for rehearing by George Anastaplo October 9, 1961

APPENDIX II (1951-1961)

A. *Letter from Richard H. Cain, Secretary, The Committee on Character and Fitness, The Supreme Court of Illinois, to George Anastaplo, June 5, 1951.*

The Committee on Character and Fitness of applicants for admission to the bar for the First Appellate Court District of Illinois has carefully considered the proofs submitted by you and the evidence before the Committee in connection with your application for admission to the bar of Illinois. I am directed by the Committee to advise you that you have failed to prove that you possess such qualifications as to character and general fitness as in the opinion of the Committee would justify your admission to the bar of Illinois.

The Supreme Court of the United States denied on October 9th the Petition for Rehearing in my bar admission case.

I should like, now that that court has confirmed my exclusion from the bar, to thank the Illinois Supreme Court and its Character Committee for the time and effort devoted to this controversy the past decade. I wish to acknowledge also the generosity and thoughtfulness of those who have supported my application.

I have been obliged, in the course of this controversy, to discuss critical defects in the legal profession in the United States. On the other hand, the virtues of America are reflected in the fact that a student of law with remarkably few supporters has been able for so long to oppose the power of the State and to carry his cause to the highest judicial tribunal in the land. That he has been able to do this is itself worthy of note even by those who regret that the long encounter has not been given its natural completion by that tribunal.

I make these parting acknowledgements at this time since I do not anticipate any further attempt, on my own initiative, to secure admission to the bar of any State. As is evident from Mr. Justice Black's dissenting opinion, my qualifications are now as clearly recorded as they ever will be. An applicant's eligibility for the bar can have little more to be said for or against it after litigation which has been so extensive as to require his expenditure of more than five thousand dollars [in filing fees and printing costs alone]. Certainly, the surrender now, for my personal advancement, of the traditional American principles which I still believe to have been in the public interest to develop and defend would recommend me only to the unreflecting.

We must all hope that the decision confirmed this week means that Illinois will be able, eventually if not immediately, to provide itself a bar of the highest character and fitness. Should my position or temperament ever be recognized as useful to the administration of justice in this State, I trust the Illinois Supreme Court will not hesitate to call on me for any further contribution I might honorably make to constitutional government and the rule of law.

Appendix III (1965-1966)


[The enclosed draft petition] is something which has been on my mind for a long time, as you probably know.

I have two questions before proceeding: Should the Committee [on Character and Fitness] grant the Petition, would you apply for rehearing under these "ground rules"? Who will join me as petitioners? (If possible, there should be
a law school professor—Stan Kaplan; a practising attorney not formerly associated with the Committee; and a member of the judiciary.)

B. Letter from George Anastaplo to Calvin P. Sawyier, March 9, 1965.

I am grateful for your interest. And, whatever may come of your efforts, I think it good for the bar to have such a question called to its attention as your draft petition does.

What can I commit myself to doing? That would depend on the circumstances. I cannot know where I will be when such a petition is finally acted upon, for we cannot know how long it would take the Committee to act. Nor do I know what I will be doing when it is acted upon. If, for instance, I should be in a new academic post, there may then be good reasons for not embarking at once upon a course of action that could reopen an old controversy and involve the university I am then associated with.

My attitude still remains that reflected in my letter of October 13, 1961, to the Chief Justice of the Supreme Court of Illinois (which is appended to my lecture, "What's Wrong With George Anastaplo?"). I should add that if the situation becomes such, because of the initiative of others, that all I have to do to secure admission is merely submit a new application, that would not bother me.

If I, as a member of the bar, were taking such a step as that indicated in your draft petition, I would:

1) mention that it has been fifteen years since the original application (and that I am forty years old this year);

2) also mention that I had been for a number of years (as I still am) a Lecturer in the Liberal Arts at the University of Chicago and that I am as well an Assistant Professor of Political Science at Rosary College;

3) observe that I had recently published pieces in several law reviews around the country (New York University Law Review, University of Detroit Law Journal, St. Louis University Law Journal) and that other publications are anticipated;

4) report (as a reflection of community sentiment) my election last year to a three-year term as a member of the Board of Directors of the Hyde Park Co-op (which can be described as a million-dollar operation with 7,000 members);

In addition, I would, as a member of the bar, prefer to

5) approach directly the Supreme Court of Illinois for a ruling by the Court on this matter, rather than the Committee on Character and Fitness;

6) ask, in any event, not simply for a ruling as to the questions to be asked but rather for a reconsideration of the record already made in this case, thereby avoiding misunderstandings and later controversy; indeed, I would prefer simply to ask the Supreme Court to admit me to the bar without further ado;
7) indicate that the petition has not originated with me, but rather reflects the good conscience of the bar. It would be good also to say that I had not seen the document before it had been submitted (but that would depend on what changes are made between the draft you have shown me and what you finally submit).

As for people who might be asked? Why not try a letter to the deans of the various law schools in this State asking whether they (with or without their faculties) would care to associate themselves with such a petition (giving them such information as that found in points 1-4, above)? I can supply copies of any materials you should want.

Have I said enough?

C. Letter from Calvin P. Sawyier to prospective signers of a petition to the Committee on Character and Fitness, September 30, 1965.

Enclosed is a draft of a petition which I wish you would join with me in filing before the Character and Fitness Committee of the Illinois Supreme Court.

As I was a member of that Committee when the Anastaplo matter was last before it, the petition would have more impact if joined in independently by other members of the Bar, and I am therefore sending this letter to a small group of outstanding lawyers—members of the judiciary, law professors, and practitioners.

Please let me hear from you on this matter. The presentation to the Committee will involve only an argument, the purpose being to get a majority of the Committee to act to foreclose any individual member from asking Anastaplo the questions he has refused to answer in the past, should Anastaplo again apply for admission to the Bar.

This matter is one solely of my own doing and decision—a matter of conscience, if you will. I do not in any way represent Anastaplo, nor does


I do not recall how closely the draft petition shown to me by Mr. Sawyier in March 1965 conformed to the petition sent by Mr. Sawyier and others to the Committee on Character and Fitness in April 1966. For this petition, see Appendix III, Item D. Few, if any, of the suggestions I made in my letter of March 9, 1965, to Mr. Sawyier seem to have been acted upon in the framing of the April 1966 petition. On the suggestion about approaching Illinois law school deans, see THE CONSTITUTIONALIST, supra note 1, at 380.

This was in 1965, only four years after my appeal to the United States Supreme Court. A decade later, and thereafter, I was far less inclined to do anything to cooperate in efforts to secure my admission to the Illinois Bar. See, e.g., Appendix VI, Item B; Appendix VII, Items A, C, E, G & H; Appendix XI, Items G, H & I. See infra note 13. See also supra note 28 to the text.
he personally have any connection with this petition. I simply feel, as I have for some time, that the principles involved are important to the Bar as a whole, regardless of what may be Anastaplo's personal desire or position.

D. Petition by Calvin P. Sawyier, Alex Elson, George L. Quilici, Elmer Gertz, Jewel Lafontant, Stanley A. Kaplan, Nathaniel L. Nathanson and Harry Kalven, Jr., to the Committee on Character and Fitness, April 27, 1966.

Now come the undersigned members of the Bar of the State of Illinois, on their own behalf and as representatives of all the members of the Illinois Bar, and petition the Committee to (a) determine, as a matter of its own discretion, to waive the Committee's requirement that George Anastaplo, applicant, be asked those questions regarding political affiliations which under the law the Committee has the right to ask if it so chooses, and which he has heretofore refused, on grounds of moral principle, to answer; and (b) if and when such decision is made by the Committee to waive its said requirement in this case, to entertain a petition for rehearing filed by the applicant, George Anastaplo, for admission to the Bar of this State, covering his activities since the date of his last application.

In support of this Petition it is stated that there is no legal requirement that the Committee ask of an applicant those questions which it has now been determined the Committee has the legal right to ask but which Mr. Anastaplo has refused to answer. The Committee has the power to ask certain questions and insist upon answers, should it so choose, but the Committee clearly has the discretion either not to ask such questions at all or not to ask them under particular circumstances.

The particular facts in the case of this one applicant clearly show that the refusal to answer is one of high moral principle and that the answers, if given, would fully satisfy the Committee's requirements and standards.

A decision of the Committee not to ask these questions of this applicant is fully justified on the special facts and circumstances of this one case and in no way requires a determination of general policy in respect to all or any other cases. The Committee has now established its legal power, and there is no further principle involved other than the moral question of whether the Committee should, as a matter of judgment in any individual case, insist upon strictly enforcing the last full measure of its acknowledged legal right.

In the words of the majority opinion in In Re Anastaplo, 366 U.S. 82, 96 (1961), we submit that "the situation [is] an appropriate one for waiver of the Committee's continuing requirement, earlier enforced after the first Anastaplo hearings (in 1950-1951), that such questions must be answered."

Petitioners are informed and believe that the failure of a person of the high moral caliber of George Anastaplo to be admitted to the Bar of the State of Illinois casts public obloquy upon the Bar of this State as a whole and tends to place the legal profession in disrepute. It is in the interest of the integrity and self-respect of the Bar itself and in the interest of public
confidence and respect in the legal profession that this Petition be granted and that the application for admission of George Anastaplo be reconsidered in the manner suggested herein.

As Mr. Justice Black said, stating facts about said applicant which are not and cannot be disputed,

For this record shows that Anastaplo has many of the qualities that are needed in the American Bar. It shows, not only that Anastaplo has followed a high moral, ethical and patriotic course in all of the activities of his life, but also that he combines these more common virtues with the uncommon virtue of courage to stand by his principles at any cost. It is such men as these who have most greatly honored the profession of the law—men like Malsherbes, who, at the cost of his own life and the lives of his family, sprang unafraid to the defense of Louis XVI against the fanatical leaders of the Revolutionary government of France—men like Charles Evans Hughes, Sr., later Mr. Chief Justice Hughes, who stood up for the constitutional rights of socialists to be socialists and public officials despite the threats and clamorous protests of self-proclaimed superpatriots—men like Charles Evans Hughes, Jr., and John W. Davis, who while against everything for which the Communists stood, strongly advised the Congress in 1948 that it would be unconstitutional to pass the law then proposed to outlaw the Communist Party—men like Lord Erskine, James Otis, Clarence Darrow, and the multitude of others who have dared to speak in defense of causes and clients without regard to personal danger to themselves. The legal profession will lose much of its nobility and its glory if it is not constantly replenished with lawyers like these. To force the Bar to become a group of thoroughly orthodox, time-serving, government-fearing individuals is to humiliate and degrade it. [366 U.S. at 114-16.]

WHEREFORE, it is prayed that the Committee grant this Petition and determine that, in the exercise of its discretion, it will entertain a petition for rehearing by said applicant, George Anastaplo, and in connection therewith waive the right to ask him those questions which he has heretofore refused to answer.

E. Letter from Mabel A. Lesser, Secretary, The Committee on Character and Fitness, to Calvin P. Sawyier, May 6, 1966.

At its meeting yesterday, the Committee on Character and Fitness for the First Appellate Court District preliminarily considered the petition you filed on April 27, 1966, with covering letter, relative to the application of George Anastaplo for admission to the Bar of Illinois, and it was determined that it should be treated as an application for leave to file a petition.

We are sure you understand that the Committee’s Rules do not in terms provide for a petition of this nature. We would appreciate it if you, or one of the other petitioners, could appear before the Committee on Tuesday, May 17, 1966, at one o’clock, so that we may make a preliminary determination as to whether to entertain the petition.


You are hereby notified that on May 17, 1966, the Committee on Character and Fitness for the First Appellate Court District, denied the
Petition filed on April 27, 1966, relative to the application of George Anastaplo for admission to the Bar of Illinois, without prejudice to the right of the applicant, George Anastaplo, to file a Petition for Rehearing.

G. Letter from George Anastaplo to Calvin P. Sawyier, June 14, 1966.

I wish you could convey to your colleagues my appreciation for the efforts made by them on my behalf in petitioning the Committee on Character and Fitness. I am not surprised by the response of the Committee, but I am heartened that lawyers of the calibre of your associates should believe there is enough of a problem here to call forth the efforts they have made.

My only reservation is with respect to the reference to me as someone of "high moral caliber." Don't make too much of me.

Thank you.

APPENDIX IV (1975)


I have, except for two short interludes, been associated with the University of Chicago as a student or employee since the Fall of 1947. I first came here seven months after completing my service as an Air Force flying officer at the end of the Second World War. All of my degrees (A.B., J.D., Ph.D) have been awarded me by the University. My intimate association with the University is reflected in the fact that one reviewer of my book, The Constitutionalist: Notes on the First Amendment, could describe its extensive

2. One of the lawyers who joined the April 1966 petition to the Character Committee wrote to Mr. Sawyier on May 27, 1966, reporting his sentiments and those of another signer of the petition upon learning of the Committee's response of May 19, 1966:

I received with regret your letter of May 24th, together with the notification from the Committee on Character and Fitness. I think that in a matter of this kind it is appropriate for the petitioners to request an expression of reasons from the Committee on Character and Fitness. I cannot tell from the letter whether they are proceeding on the basis of rejecting the petition because Anastaplo did not sign the petition, or whether they indicate that they are not sympathetic with any petition on this subject [no matter who] may file it, or whether they really mean to invite a petition from Anastaplo which they might be pleased to grant. All in all I think that a failure to communicate any reasons is unworthy and that a petition of this kind, in a matter of an extraordinary nature which has national importance as well as local significance, calls for a statement of position. If the committee refuses to explain itself, and so says, I think this then gives us an opportunity to address a communication to the Board of Managers [of the Chicago Bar Association] and to focus further attention on the subject matter. I hope eventually we may find somebody with enough sense to take appropriate action of the kind which we requested in our petition.
notes as "like a little university, a second University of Chicago (the author's alma mater)."

For almost twenty years now I have been teaching regularly ("full time") in the Downtown Center of the University. In recent years, I have also been teaching regularly at Rosary College (in Political Science and Philosophy) and have been conducting an annual graduate seminar at the University of Dallas (in Politics and Literature). During the past year I have been serving as well as Advisor and Research Director to the Governor's Commission on Individual Liberty and Personal Privacy for the State of Illinois.

I write on this occasion to determine whether anything can properly be done to secure for me a regular academic post on the campus of this university. Best of all, it seems to me, might be an appointment which places me in two or more schools, departments or committees of the University. The diversity of my publications, as is evident in the enclosed bibliography, might well recommend me for serious consideration by various of the dozen or so faculties to which this letter and its enclosures are being sent. To approach the array of addressees that I do with this letter may suggest that I must be either remarkably qualified or woefully unsuited for advancement in this university. I am prepared to run the risk of the latter judgment.

This is, I realize, an unconventional way to proceed in such matters. But then, my career (ever since my bar admission difficulties began in 1950) has always been rather unconventional. However that may be, I do have something of a reputation both as a teacher and as an author—and I believe it in the interest both of the University and of myself that my current academic duties within this institution be formally reassessed. One of my hopes is, of course, to be able in the years ahead to look forward to a more sensible academic schedule than what I have now, one which permits me to reduce both my hours in class and the considerable time devoted to travel to and from class. (I now teach an average of almost twenty hours a week during the school year.)

This is, I also realize, an awkward time to inquire about academic appointments. But since I am already on the roster of University teachers, this may not be as awkward in my case as it might be with respect to someone who would have to be brought in from outside the University. I happen to think that the regularization of status that I am here suggesting should have been to long ago, that the University has suffered even more than have I from the use made (or not made) of me on the Midway the past decade or so. I should add that I have been considered from time to time for campus assignments—but in such a curious way as not to inspire confidence in the judiciousness of those proceedings. This is to be regretted and may someday seem peculiarly inexplicable.

I enclose, along with the bibliography (of more than three hundred items) already referred to, a sampling of my writings. This sample includes chapters from *The Constitutionalist* and a couple of reviews of that book by distinguished scholars. (My bibliography collects, in Item II-2, citations to two dozen reviews of *The Constitutionalist.*) The table of contents of my second book, *Human Being and Citizen: Essays on Virtue, Freedom and the Common Good*, is also enclosed, as is a description of it by its publisher. This book should be out in June.

I already have materials prepared, as may be evident from my bibliography, for a half-dozen unified collections of my writings such as *Human Being and Citizen*. (*The Constitutionalist* runs to 825 pages, *Human Being and Citizen* to 350 pages.) Copies of *The Constitutionalist* can be made available for review by the addressees of this letter, as can page proofs of *Human Being and Citizen*. Also available are copies of many of the other items listed in the enclosed bibliography.

All this is not to suggest that I seek to terminate my most instructive association with University Extension. It is to say that a more sensible allocation of my time, especially with the next two decades in view, should be considered by the University—and this at a time when my health remains quite good and my productivity respectable.

Since I *am* here, this inquiry can be dealt with by us in a somewhat leisurely manner. Additional personal and professional information can at once be made available to interested deans, chairmen and faculties. I hope that an imaginative response can be made by the University faculty to this inquiry from a longtime colleague who considers himself very much part of this community and who can surely be thought of as having been sufficiently tested for academic recognition of an enduring character.

Copies to:

Provost and Academic Dean
Schools, Divisions, Departments and Committees:
1) Dean, The College
2) Dean, Divinity School
3) Dean, Graduate School of Education
4) Dean, The Law School
5) Dean, Division of the Humanities
6) Dean, Division of the Social Sciences
7) Dean, University Extension
8) Chairman, Analysis of Ideas and Study of Methods, Committee on
9) Chairman, Anthropology, Department of
10) Chairman, Behavioral Science, Department of
11) Chairman, Classical Languages and Literature, Department of
12) Chairman, Comparative Studies in Literature, Committee on
13) Chairman, Conceptual Formulations of Science, Committee on
14) Chairman, English, Department of
15) Chairman, General Studies in the Humanities, Committee on
16) Chairman, General Studies in the Social Sciences, Committee on
B. Letter from George Anastaplo to a member of the University of Chicago faculty, May 8, 1975.

I very much appreciate your kind interest in my letter to Mr. Wilson of April 23. I appreciate as well your desire to do something on my behalf. The following observations may be of use to you in considering what the best approach would be to the University community.

At the time I prepared and distributed my letter of April 23 I knew nothing of any current effort within the University on my behalf. (So far as I know, no substantial effort was afoot at the time.) Nor did I consult with or inform anyone about what I was doing.

Samples of my writings, an extensive bibliography and other materials were sent, with the April 23rd letter, to the thirty or so addressees listed in that letter. In addition, copies of the letter, along with a curriculum vitae (the first two pages of my bibliography), have been sent to people I know in the University.

I have already discouraged within the past fortnight a couple of organized student efforts on my behalf. I feel much the same way about efforts (such as the one you have suggested to me) to recruit support on my behalf from prominent academic people outside the University. Even a "campaign" among University faculty would not attract me. Certainly, I should not like to become an "issue."

I mention these facts to emphasize what kind of effort my letter represents: a quiet appeal has been made to the good sense of the University faculty. I have been around here long enough—and enough reliable indications are available about both my teaching and my writing—to provide a basis for responsible action by men of good will.

I realize that to approach academic matters in this fashion may be considered not only unconventional but, even worse in some people's eyes, remarkably naive. But, for better and for worse, a certain kind of naivete has characterized my careers for three decades. This is not likely to change.

Thus I can be taken as saying to the University faculty: "Here I am. You know, or should know by now, what I am like and what I am capable of. Is it not both in your interest and in mine that sensible arrangements be made? I rely upon your informed imagination."
This, it seems to me, is the best approach—and the most instructive.4

APPENDIX V (1975)

A. Convocation Citation upon an award of the degree of Doctor of Humane Letters to Edward H. Levi by the University of Chicago, June 13, 1975.

Edward Hirsch Levi, Karl N. Llewellyn Distinguished Service Professor of Jurisprudence in the Law School, President Emeritus of the University, Attor-

4. The response by the Acting President of the University of Chicago to my St. George’s Day initiative was perfunctory. One of the addressees sent me a cordial acknowledgement of receipt of the materials sent him. Another addressee (in the humanities) informed me in a rather cavalier fashion that I was not qualified to be considered by his department. Compare Alvis, Moral Criticism, CLAREMONT REV. OF BOOKS, Oct. 1983, at 1. I heard nothing at all from the other two dozen addressees to whom a large shopping-cart full of materials had been mailed by me on this occasion.

On more than one occasion in recent decades, one dean or another of the University of Chicago Law School has conveyed to me such sentiments as the following:

Thank you for your letter of February 22. Unfortunately, I have to inform you that our appointment needs and plans will not make it possible for us to accommodate you. I should like to assure you, however, that the matter was given careful consideration when you raised it last year as well as in response to your more recent letter. I regret that I have to convey this to you because, as you know, my respect for you is very great indeed.

Of course, I have never had any substantial reason to “know” any such thing (“my respect for you is very great indeed”). In fact, University of Chicago Law School deans have repeatedly managed to restrain themselves from praising me in public, whatever they may “personally” think of me. See, e.g., Appendix V, Items D & E.

It should be noticed that the February 22nd letter from me referred to by this dean had itself reminded the dean of a letter I had sent two years before in which I had inquired about “my possible appointment to an appropriate post in the Law School,” a letter which had not elicited any response at the time, it seems. The dates do not really matter here, however, nor the dean: the official Chicago attitude established from the beginning (in November 1950) has continued into its fourth decade. There has also continued my longstanding opinion, conveyed to one University of Chicago Law School dean in 1979, “I do have the impression that someone like me is needed.” It remains unfortunate that “the best and the brightest” among our law school students can be consistently misled (if not even corrupted) by careerists.

I have lived in the University of Chicago neighborhood ever since my military service in the Second World War. See Appendix XII, Item C. For some years now I have watched from the sidelines the struggle for the soul of the University of Chicago Law School. There was once a fundamental issue dividing that faculty, but only so long as old-fashioned people were still there (people such as Harry Kalven, Jr., Wilber Katz, Malcolm Sharp, and Roscoe Steffen). In more recent years, there has been merely a factional (albeit sometimes bitter) struggle among the “realists”: On one side have been those who have transformed prudence into expediency; on the other side have been those who have transformed principle into ideology. I am reminded of the story Abraham Lincoln told with the punch line (by the long-suffering man watching his wife and a bear in a fight), “Go to it, bear! Go to it, woman!” See supra notes 114 & 116.
ney General of the United States: Distinguished scholar, gifted teacher, re-
spected leader, who exemplifies the power of reason and integrity in the world
of learning and in public service.5

B. Excerpt from Victor S. Navasky, "The Attorney General as
scholar, not enforcer," New York Times Magazine, September 7,
1975.

The question is: Can anyone who comes out of this special academic
society [of the University of Chicago] have what it takes to fulfill the
demanding mission of chief law-enforcement officer of the United States,
when white collar and street crime are on the rise, civil liberties are on the
defensive, civil rights are out of fashion and the Justice Department is still
reeling from revelations of impropriety and political corruption?

It is too soon for a definitive answer—Levi has been on the job for little
more than six months—but his university years offer a number of hints. His
role in defusing campus crises involving such matters as loyalty oaths, black
studies and student protest would have reassured Senators Eastland and
Hruska that he was, indeed, no radic-lib. In the context of a rigid commit-
ment to intellectual standards and institutional survival, he emerges as a
practitioner of the politics of caution.

In the nineteen-fifties, when George Anastaplo, a brilliant law student
(second in his class), was denied admission to the bar because he refused,
on principle, to answer the Illinois Bar Association's Character and Fitness
Committee are-you-now-or-have-you-ever-been questions (he wasn't and
hadn't), some faculty members, such as Malcolm Sharp and Harry Kalven,
worked on briefs in his defense, as did such student contemporaries as
Ramsey Clark, who went on to become Attorney General, and Abner Mikva,
who became a Democratic Congressman. Other faculty members (Soia Ments-
chikoff, Sheldon Tefft, Walter J. Blum and Allison Dunham) drafted a
resolution reaffirming the right of the committee to ask such questions and
advising the student who felt as Anastaplo did "to consider now rather than
later whether he can best serve his ideals by continuing his education in
law."6 Dean Levi took no public position. Privately, he disapproved of
Anastaplo's stand as windmill-tilting. Later, when he testified before the
Eastland Committee on the jury project, which he headed (University of
Chicago researchers had bugged four Kansas City juries with the approval
of the judge to study their behavior), he told the committee in response to
a question about the case, "I thought Anastaplo was wrong." Today, he
says, "I thought Anastaplo's position was ill-timed. I thought the big problem

5. See Anastaplo, Mr. Justice Black, His Generous Common Sense and the Bar Admission
Cases, 9 Sw. L.J. 977, 1018-20 (1977) [hereinafter cited as Mr. Justice Black]; Anastaplo, In re
6. See THE CONSTITUTIONALIST, supra note 1, at 333.
was the teacher-oath cases. I thought to raise the non-Communist oath issue with the Character and Fitness Committee was the wrong way to do it and because of the timing of the thing he would lose and hurt himself, and he did. We were all trying to help him, whether he knew it or not.”


My attention has been called to the article in the New York Times Magazine for September 7 in which your career is reviewed. I read with particular interest, of course, what was said about me.

I would appreciate it if you would let me know if your sentiments or language with respect to me should have been incorrectly reported in that article.

Thank you.


I am sorry you were annoyed or upset by the Navasky article, which, as I am sure you know, I did not write; I did not arrange to have written; and I did not see it before it was published. Mr. Navasky interviewed me, but he interviewed a great many other persons and did research on his own. I did not bring up the subject of George Anastaplo. I respect and admire you greatly. I would not have wanted to open up old wounds between us. I thought over the years a friendship or understanding between us had grown.

But you have asked me specifically about the article. I will try to answer as accurately as I can. I do not believe the material on page 84, column one came from me. The statement about windmill tilting, if it came from me—and I am certain I did not raise it—would have meant that you had raised an issue which I was sure you would lose in the courts. The material in the second column on you which begins “Today, he says etc.” is, I believe, what I said. And if one’s recollection over so many years ago is any good—and of course it is likely to be wrong—I believe that was what I told you years ago. If I had been writing about you myself, I would have gone on to describe your successful subsequent career, your excellence as a teacher and as a writer. I would have said that I knew your actions sprang from deeply felt convictions, and that present Supreme Court decisions would support the position you took.

As to the statement before the Eastland Committee, that is in the transcript, I assume that is where Mr. Navasky got it from. I remember discussing with Harry Kalven when the transcript came to us as to whether or not the transcript was accurate in reporting that statement.

There was a disagreement between us, but I never felt that disagreement should imply lack of mutual trust.
I don't suppose this letter will satisfy you, but I very much want it to satisfy you, because I have a high regard for you and have had for many years.


I have your letter in response to mine of September 8. I very much appreciate both that letter of the 15th and your telephone call of the 13th to read me what you were sending.

I do not believe that my letter of the 8th can fairly lead to your conclusion that I was "annoyed or upset by the Navasky article." Rather, I was intrigued and challenged by it, particularly by your assurance, "We were all trying to help him, whether he knows it or not." Aside from that revelation, however, the sentiments about me attributed to you in the article were what I had long understood you to believe about me and my bar admission efforts.

Even so, I wrote you to inquire about what you had said since I myself have all too often been misquoted in the press. That is, I wanted to make sure of what had, and had not, been said, before I wrote the letter to the editor of the New York Times Magazine which seemed to be called for.

I am glad I did inquire. Your responses have moved me to revise a draft of my letter to the editor in which I had concluded a now discarded inventory of grievances ("a long train of abuses," so to speak) with the observation, "If Mr. Levi, as Attorney General, sincerely regards as helpful such conduct as he has exhibited toward me over the years, then God save these United States."

There is, I confess, some annoyance on my part—not because of what is said about me in the article but because of your failure to communicate to me earlier what you choose to say in your letter of the 15th. Such sentiments, had I known them, would have moderated my assessments of you. Not that serious differences do not remain between us—and such differences are at least implicit in the letter I have prepared for the Times—but what I have said about you heretofore would have been somewhat less polemical. However that may be, I believe you are entitled to a frank statement of my opinion in response to yours:

Mr. Navasky, as I indicated over the phone, interviewed me also. He wanted to know, because of what others had told him, about our relations over the years. (I had no previous contact with him.) I told him about these matters what I have long thought and said about them (and sent him afterwards some of my publications). But, as I recall that fairly short telephone interview, I also insisted that he should talk to Malcolm Sharp as someone who was both truly helpful toward my bar admission efforts (after counselling me against resisting the bar committee) and a longtime admirer of yours. I was glad to learn from Mr. Sharp that Mr. Navasky did telephone him, evidently because of my insistence—and Mr. Sharp, in the fashion one
would expect of a gentle man of seventy-eight years, toned down my irrelevant remarks.

The part of your letter which particularly interests me, and which I recall having expressed the most extended reservation about in talking to you on the phone, is that which reads, "If I had been writing about you myself, I would have gone on to describe your successful subsequent career, your excellence as a teacher and as a writer. I would have said that I knew your actions sprang from deeply felt convictions, and that present Supreme Court decisions would support the position you took." Related to this are the concluding remark in your letter that you "have a high regard [for me] and have had for many years," and your observation on the phone, that I had not devoted my career merely to rehashing my bar admission case. (Indeed, I do not believe I have ever referred to my case in any class I have conducted, even when I have taught constitutional law. I have discussed it, on a couple of occasions with classes at the Law School, as Harry Kalven's guest.) The present position of the Supreme Court, I might further note, is the least of my concerns these days: I have known the Court to be wrong before; its "support" really means something, at least to someone of my perhaps too demanding temperament, if it should also be correct—and thus I have tried to instruct it from time to time.)

I think it would be salutary to develop even further here the reservation I expressed when we talked on the 13th. I remain puzzled why you did not indicate to me before now, and in an unmistakable fashion, that you have had for some time the favorable opinion you now inform me you have about my work. I have not forgotten your explanation, that you have indeed said these things to others. But it would have mattered to me, both personally and professionally, if your present esteem for my writing and teaching had become as generally known as had been your earlier marked disapproval of what I was doing, especially in the University of Chicago community where you are so highly regarded and where I would much prefer to remain. I was very much aware of your original adverse opinions, as you intended I should be. But I never heard a word, directly or indirectly, about any opinions favorable to me you might have come to hold or to express. Nor, it would seem, did Mr. Navasky.

All this is particularly worth thinking about since I have endured, for a quarter century now, what I consider rather shabby treatment of me by the Law School faculty of which you remain the most eminent member. I realize there have been honorable exceptions among that faculty, for which I have again and again expressed my appreciation. But these few exceptions point up, by contrast, the conduct of most of the faculty—and of that faculty as a more or less organized body. That conduct could perhaps have been excused, however self-serving it may have been, during the worst days of

7. See, e.g., Mr. Justice Black, supra note 5, at 997-1021.
the Korean War and the McCarthy Period; but it should have long since been repudiated as unbecoming and thereupon corrected. Thus, a proper response to my case by the Law School faculty—if not in 1950-1951, at least by the time of my rehearing in 1957-1958—would have induced the bar committee to behave sensibly.

One can now hear at other law schools, but not at ours, that I was a credit to the profession and to my school in my extended resistance to the bar committee's demands and in my defense of the Declaration of Independence. The least that should have long since been done, for the honor of the University of Chicago and the instruction of future law faculty and students, would have been a clear public declaration by my teachers (and by the dean who had been their leader) that my continued exclusion from the bar was simply unjustified. (Such a declaration could have been published, among other places, in the law review from which I was summarily evicted at your instigation.) All this I can now say in a somewhat disinterested manner, since I did announce almost fifteen years ago that I do not anticipate ever again making an effort (on my own initiative) to become a member of the Illinois bar.

One result of a proper reassessment by the Law School of what I had done and stood for—a timely public reassessment and repudiation of the rather hostile attitude which (I regret to have to say) you contributed a good deal to establishing and perpetuating—, could well have been for me a different kind of academic career, one which did not obligate me to teach some twenty hours a week all over Cook County and one which did not find me (every few years) encountering unacknowledged but nevertheless potent administrative resistance whenever one staff or another in the College of the University of Chicago proposed to take me on as a regular teacher on campus.

It should go without saying that the unnecessary (and, in the beginning, unanticipated) difficulties I encountered in this respect at the university where I had had a distinguished career as a student were multiplied at other schools and universities where I was for so many years known only as a "case." At the other schools, in the formative years of my academic career, I did not even have the advantage of faculty committees proposing that I be hired. Thus, my appointment at Rosary College was generated by a former fellow-student of mine at the University [of Chicago] who suddenly found herself President of [Rosary] College and in need of a Ph.D. in my field (with my J.D. thrown in as a bonus). And my Downtown Center teaching assignment, at the University itself, came upon the unilateral decision of an independent Dean of Extension who was something of a maverick.8 (My twenty years in

8. The Rosary College President who hired me was Sister Candida Lund. The University of Chicago extension division dean who hired me was Maurice F.X. Donohue, who could and did act on his own initiative (that is, without submitting my name for approval to the central administration of the University). These two administrators were willing to put me into the classroom at a time when almost no one else would.
University Extension have been preceded by five years as a Research Associate
in the University's Industrial Relations Center.\(^9\)

I have on more than one occasion indicated my disapproval of the treat-
ment I have been accorded by my university. Thus, I could say to you in
your capacity as President of the University, in a letter of June 6, 1972,
"Permit me to add in passing that it will some day provide a curious
footnote to the history of this era on the Midway that someone of my
reputation as a teacher and of my array of publications should have been
restricted all these years in the University to adult education. Whatever the
causes of such 'segregation,' it has at least had the advantage of permitting
me to further the education of one particular adult—that is, myself." I note
that there was no response to this observation, either in the form of an
inquiry as to what I meant or in the form of an attempt to correct any
misconception I might have had about improprieties. (I am, as you can see
by the enclosed letters of April 23 and May 8 of this year, rounding out my
twenty years as Lecturer in the Liberal Arts by inquiring of the administration
and faculties of the University whether it is not time to do something
imaginative about my anomalous status. Am I not entitled to say about the
University of Chicago, as it has turned out I was entitled to say about the
Illinois bar many years ago, that it needs me more than I need it? Certainly,
an honest posing of the problem of one's status, before one turns to other
things, does seem in order, provided it can be done with an appropriate
dignity. The response thus far has been, shall we say, somewhat meagre and
rather stiff—which is, I suppose, in "the Chicago tradition" I have gotten
used to.)

There is no need, on this occasion, to describe your role in all this any
more than I have already done. It suffices to conclude that I have considered
your role decisive over the years. I realize that you have long been a very
busy man, caught up in affairs of moment. For all we know, you may be
destined for even higher things—and I, for one, would not want to keep
you from whatever is your due. But I suspect that what has been at issue
between us for a quarter century is, in both its moral and its intellectual
dimensions, really more significant than the ephemeral crises and laudable
ambitions which we all get caught up with from time to time. I realize that
my saying how things have been between us and at the University does not
make them so; but neither would my silence change the facts, including the
fact of a longstanding sincere concern for the welfare of the University on
your part which has sometimes taken questionable forms.

\(^9\) I was hired at the Industrial Relations Center by Nicholas J. Melas, who also could and
did act on his own initiative. Mr. Melas has been for some time now the President of the
Metropolitan Sanitary District of Chicago. Although he is an old-line Democrat, he could be
wholeheartedly recommended for reelection in November 1986 by the Chicago Tribune. See
Chicago Tribune, Oct. 18, 1986, § 1, at 12, col. 2.
I do not believe I am primarily concerned about my career in what I say here, but it should also be evident from what I have said and done that I have not been contemptuous of such concerns either—or of the legitimate needs and aspirations of the University. I have been fortunate enough and talented enough, as well as energetic enough, to make assets out of my liabilities—and I should be able to continue to do so, so long as my health holds up. But, on the other hand, martyrdom has never appealed to me—and so I make reasonable efforts to straighten things out. Besides, as the fact of this letter should testify, you are important enough and intelligent enough to be worth taking some trouble with.

You are quoted as saying at the end of the New York Times Magazine article, “History will, you know, keep the score.” I am concerned that the historical record on these matters should be both clear and useful—and, even more, that those I criticize should be fairly treated. (That is, although history may be of questionable value, justice is not.) I have on this occasion done no more than allude to our differences, differences with respect both to modes of conduct and to opinions about the nature of law. These modes and opinions may not be unrelated to one another.

I have on other occasions touched upon our differences in print. I hope to discuss these differences at length some day in a manner worthy of your reputation, your intentions and your accomplishments. In the meantime, however, I should like to use what is said about me in the Magazine article as a point of departure as I settle for a preliminary sketch of that more extensive discussion. The letter you have sent me, with your permission to reprint it, would be of immediate use to me for that sketch and would help me present you in the best possible light. The same can be said about any response you may choose to make to this letter.

All this would have the added advantage of helping to make public the sentiments about me you have been kind enough to share with me: such publication, it seems to me, would be good for you, me, the University and perhaps even the country. In any event, I have collected, in the convenient form of this letter, some of my thoughts on the relation of my career (such as it is) to yours.

I turn now to two other matters:

First, I enclose a talk of mine, published in the Spring 1975 issue of the Chicago Principals Reporter, “The Babylonian Captivity of the Chicago Public Schools.” This bears on the current busing controversy and hence may be of some immediate use to you. Permit me to be simple-minded: The really serious problem is not “busing for the sake of integration”; it is busing itself. And the logistics of busing, it seems to me, are intimately related to the problem of school size. Among my conclusions in the enclosed article is this, “What is the appropriate school size? Should not the criteria include this limiting condition, that the school principal be able to recognize (not necessarily know the names of) all of his students and that he be able to know well all of his teachers? The ages and sensibilities of his students also bear on this equation. In fact, it can be argued, elementary schools
could well be limited to some 200 students; high schools to some 500 students. . . .” And, unless one is simply doctrinaire, this and other pedagogical considerations move us into neighborhood schools, at least through junior high school.

Second, I enclose also a recent letter of mine, to a White House staff member we both know, about Jane Kennedy.10 She is the nurse I presumed to call to your attention, at the end of our telephone conversation of the 13th, as someone who has no business being in jail. She, too, has tilted at windmills here and there, although in a somewhat grimmer fashion than have I. We should not wait a quarter century to give her her due—which, in her case, would be immediate release from prison.

Thank you for hearing me out.11


In “The Attorney General as scholar, not as enforcer” (September 7), Victor G. Navasky sets forth Edward H. Levi’s present justification of why he behaved as he did with respect to my Illinois bar admission controversy in 1950 and thereafter, behavior which promoted the ungenerous “hands off” attitude toward my case displayed to this day by my law school (of which Mr. Levi was dean when my troubles with the bar began). This attitude of the Law School and its distinguished Dean permitted an unprincipled Committee on Character and Fitness to do what it did to my legal career.

Anyone who knows the Attorney General well knows that he can be even more shrewd, and hence adroit, than he is shown in Mr. Navasky’s perceptive article to be. One cannot overestimate how much the welfare of the University of Chicago has figured in Mr. Levi’s careful calculations over the years, even with respect to activities that might otherwise seem unduly manipulative and self-serving. An excessive cautiousness, which he and others mistake for prudence, should become evident during his tenure as Attorney General.

Readers interested in learning what I have had to say about Mr. Levi “as enforcer” (for example, in his unfortunate responses to the controversy which has kept me from the practice of law and, in effect, from a conventional academic career), may consult the index in a couple of my publications, The Constitutionalist (S.M.U. Press, 1971) and Human Being and Citizen (Swallow Press, 1975).

Also instructive, for evaluating the warnings Mr. Levi marshalled against me in the 1950s in his hardly helpful efforts to make me surrender to the

10. This Jane Kennedy letter, of August 31, 1975, may be found in Anastaplo, Passion, Magnanimity, and the Rule of Law, 50 S. Cal. L. Rev. 351, 363-67 (1977) [hereinafter cited as Passion, Magnanimity].

11. Mr. Levi was unable to make more than a perfunctory response to my letter, thus bringing this correspondence to a close. See infra Appendix XII, Item B.
bar committee, are (1) Justice Hugo L. Black's 1961 dissenting opinion on my behalf, (2) Malcolm P. Sharp's article in the Spring 1973 issue of the University of Chicago Law School Record, "Crosskey, Anastaplo and Meiklejohn on the Constitution of the United States," and (3) my article on Mr. Sharp in the current issue of the University of Chicago Law School Alumni Journal.

The Attorney General has, since the publication of Mr. Navasky's article, graciously given me to understand that he holds my work both as a teacher and as a writer in considerably higher esteem than I and others had been led to believe. I should point out, in turn, that the Levi article does not adequately reflect one valuable talent Mr. Levi has developed over the years, the ability to appeal to the most generous impulses in others, especially in those who would rather have an injustice done them than be guilty of doing an injustice themselves.

I reserve for another occasion a discussion of the relation of all this to Mr. Levi's influential (but, I believe, mischievous) opinions about the nature and purpose of what he calls "legal reasoning" (that is to say, rhetoric).

G. Excerpt from a talk by George Anastaplo at a Memorial Service for Malcolm P. Sharp, Rosary College, October 5, 1980.12

Malcolm Sharp's quite busy years at Rosary were preceded by seven interesting years in New Mexico, two of them in association with a law firm opened by some of his students. The Albuquerque years were preceded, of course, by his three productive decades at the University of Chicago Law School. These were obviously important years because of the calibre of the faculty and of the student body. His relations with some of his colleagues did become strained by the end, primarily because the faculty had, by and large, not been as sensitive as he thought they should have been to certain constitutional principles and with respect to certain causes he took seriously. Even so, he was comforted in his closing years to consider himself reconciled to his former colleagues, including a dean [Edward H. Levi] (who had been a favorite student of his and whom he respected highly and from whom, he was troubled to recall, he had differed sharply). One suspects, by the way, that Mr. Sharp (because of his undue fear of inflicting pain) took these differences more seriously than his law school colleagues had. However that may have been, one did learn not to bring certain problems to his attention, since he would become more troubled about them than one was oneself.

H. Announcement, "Edward Levi to Head Arts and Sciences,"
University of Chicago Magazine, Summer 1980.

Edward Levi, PhB '32, JD '35, the Glen A. Lloyd Distinguished Service Professor, former dean of the Law School, president of the University, and attorney general of the United States, has been elected president of the American Academy of Arts and Sciences.

The academy, headquartered in Cambridge, Massachusetts, was founded by John Adams in 1780. Levi, a native and long time resident of Hyde Park [in Chicago], is its first president from outside the Boston area.

APPENDIX VI (1976)


I am writing to you because the Chicago Council of Lawyers would like to take action to obtain a reversal of the decision denying you admission to the Illinois Bar.

We believe the decision denying you admission to the Bar was wrong when it was made, continues to be wrong, and should not be allowed to stand. A reversal is something to which you are personally entitled, but it is also a matter of importance to the Bar as a whole.

Procedurally it appears to us that the matter could now be raised by the filing of a petition for reconsideration by the Character and Fitness Committee. We would be delighted to take the action of filing such a petition for reconsideration entirely on our own initiative; however, it appears to us (and a member of the Character and Fitness Committee confirms this view) that such a petition probably must be filed as a technical matter by the applicant himself. One possible approach would be for you to file a simple statement requesting reconsideration which we would accompany with a letter setting forth the Council's view that you should be certified for admission to the Bar. Our letter, as I envision it, would be fairly brief, referring to the record of the earlier proceedings as summarized in the various court decisions and possibly quoting a portion of Justice Black's opinion. We would, of course, be glad to have you review and approve our letter.

I do not know whether admission to the Bar at this point would have any significance to you in terms of professional activity. But even if it would not have any practical consequence, it seems to us that your admission would have enormous symbolic importance—and conversely that absent a reversal, the prior decision in your case remains as a public stain on the character of the Illinois Bar.

I would appreciate your response to the possibility of action on this matter. You could call me at 782-0600 or write to me at the Council office at your convenience.

Thank you very much for your letter of April 20 with its announcement that "the Chicago Council of Lawyers would like to take action to obtain a reversal of the decision denying [me] admission to the Illinois Bar." I have delayed answering your generous letter because I have had to be out of town for some lectures and seminars.

It is good of you and your associates to propose "filing a petition for reconsideration [of my bar admission matter] by the Character and Fitness Committee." But, it seems to me, it would be far better for the Supreme Court of Illinois and its character committee to repudiate publicly and to correct on their own motion what has been done during the past quarter century in my matter.

Be that as it may, I am not myself inclined at this time "to file [the] simple statement requesting reconsideration" which you suggest may be necessary "as a technical matter" in order to start things moving again. I said, in an October 13, 1961 letter to the Supreme Court of Illinois announcing my "retirement" from the practice of law, "... I do not anticipate any further attempt, on my own initiative, to secure admission to the bar of any State." And I concluded that letter, written a few days after the final disposition of my appeal by the Supreme Court of the United States, "Should my position or temperament ever be recognized as useful to the administration of justice in this State, I trust the Illinois Supreme Court will not hesitate to call on me for any further contribution I might honorably make to constitutional government and the rule of law." (The entire letter may be found at page 406 of my book, *The Constitutionalist: Notes on the First Amendment*. Further discussion of the entire matter may be found in my most recent book, *Human Being and Citizen*.)

I am obliged to add that I must dissent from your opinion that something should now be done about my status as an applicant for admission to the bar. I confess to serious personal doubts that this would be in the public interest at this time. That is, it may be most salutary for the bar, the law schools and the courts of this State to continue to be reminded, by my permanent exclusion from the practice of law, of what can happen when fearful men are permitted, by those who should know better, to sweep aside the old-fashioned standards of decency and fair play upon which our country depends.

13. See *Human Being and Citizen*, supra note 1, at 105. See also Appendix II, Item B.

My Oct. 13, 1961 letter to the Illinois Supreme Court proved to be critical to my life (and to my equanimity): it publicly "committed" me to a determination to put my bar admission efforts and any possible career as a lawyer behind me as I turned "full time" to reading, writing and teaching (and hence to learning). This may also be described as "cutting one's losses" and asking for a new hand to be dealt. See *supra* note 1.
Should not my troubling exclusion be permitted to stand as a useful reminder as well that those who are privileged to resist the self-righteous demands of desperate inquisitors need not be destroyed?

APPENDIX VII (1977-1979)

A. Letter from George Anastaplo to Richard James Stevens, Vice-Chairman, The Committee on Character and Fitness, February 14, 1977.

I am grateful for your telephone call of February 11, with its suggestion that I revive before the Committee on Character and Fitness my application for admission to the Illinois bar. Although I realize you can speak only in your capacity as an interested lawyer, not in your capacity as vice-chairman of the Committee, I recognize that your opinion that a serious injustice has been perpetrated in my case does forecast a different position on the part of many Committee members should I reapply.

My own position, however, remains that which I set forth in an October 13, 1961 letter to the Supreme Court of Illinois announcing my "retirement" from the practice of law, when I said, "... I do not anticipate any further attempt, on my own initiative, to secure admission to the bar of any State." I concluded that letter, written a few days after the final disposition of my appeal by the Supreme Court of the United States, "Should my position or temperament ever be recognized as useful to the administration of justice in this State, I trust the Illinois Supreme Court will not hesitate to call on me for any further contribution I might honorably make to constitutional government and the rule of law."

For me to say what I can and cannot do is not to presume to say what the Illinois Supreme Court and its character committee should now do. What the bar authorities can do need not, it seems to me, depend on any cooperation or promise of cooperation on my part. The Supreme Court of this State has acted before on its own motion in the face of changed circumstances. (Consider, for example, the action taken by the Court in Haiman v. Morris [July 7, 1964], as reported in 46 Chicago Bar Record 161, 172 [January, 1965]. See, also, University of Chicago Law Alumni Journal, Fall 1976, pp. 17, 20.) What the Court and its character committee have done to me heretofore, they can surely undo on their own, if so determined. In any event, someone who has been condemned in public for a quarter century should not be rehabilitated only in private.

Thus, the most salutary way of proceeding, if something is to be done at this time, would be for the Court on its own motion, or at the suggestion of its character committee acting on its own motion, to reconsider my exclusion from the bar and (if then so minded) spread on its records an
unconditional invitation to me to appear to take the constitutional oath of attorney. Thus, also, nothing is needed from me for the Court "to set things right" in this manner, not even an account from me of what I have been doing since my last appearance before the Committee almost two decades ago. (I mention this because of the routine application form you referred to.) Who I am, as well as what I have been obliged to stand for in this community, speaks for itself—and should require no recapitulation by me at this time for purposes of possible admission to the bar.

I should at once add that I do not believe anything need be done about me at this time. That is, I continue to believe what I said in my response of May 1, 1976 to the Chicago Council of Lawyers, when that bar association informed me (in a letter of April 20, 1976) that it "would like to take action to obtain a reversal of the decision denying [me] admission to the Illinois Bar." I said on that occasion, "... I must dissent from your opinion that something should now be done about my status as an applicant for admission to the bar. I confess to serious personal doubts that this would be in the public interest at this time. That is, it may be most salutary for the bar, the law schools and the courts of this State to continue to be reminded, by my permanent exclusion from the practice of law, of what can happen when fearful men are permitted, by those who should know better, to sweep aside the old-fashioned standards of decency and fair play upon which our country depends."

Of course, circumstances can so change as to require me to reconsider my position. But, as I also indicated to the Chicago Council of Lawyers, my troubling exclusion does stand as a useful reminder that those who are privileged to resist the self-righteous demands of desperate inquisitors can somehow survive, sometimes virtually on their own. Should we not leave it to our imaginative successors to work out an appropriate posthumous rehabilitation, if that should someday seem to be salutary?

Please rest assured that I do appreciate your generous interest and that of Calvin Sawyier, that former member of the Character Committee who has been responsible on more than one occasion for reviving inquiries about my standing with the Illinois bar.

B. Petition by Calvin P. Sawyier, Alex Elson, Elmer Gertz, Nathaniel L. Nathanson, Alexander Polikoff and Stanley A. Kaplan to the Committee on Character and Fitness, April 28, 1977.

Now come the undersigned members of the Bar of the State of Illinois, on their own behalf and as representatives of all the members of the Illinois Bar, and petition the Committee: (a) to determine, as a matter of its own discretion, to waive the Committee's requirement that George Anastaplo, applicant, be asked those questions regarding political affiliations which the Committee has been held (In re Anastaplo, 366 U.S. 82) to have the right to ask if it so chooses, and which he has heretofore refused, on grounds of moral principle, to answer; and (b) upon and after such action, to submit
sua sponte to the Illinois Supreme Court the name of George Anastaplo for admission to the Bar of said Court.

In support of this Petition it is stated that, even giving the fullest effect of *res judicata* to the decision in *In Re Anastaplo*, 336 U.S. 82, there is no legal requirement that the Committee ask of an applicant any of those questions which it was there determined the Committee had the legal right to ask but which Mr. Anastaplo refused to answer. The Committee has the power to ask certain questions and insist upon answers, should it so choose, but the Committee clearly has the discretion either not to ask such questions at all or not to ask them under particular circumstances.

The particular facts in the case of this one applicant clearly show that the refusal to answer is one of high moral principle and that the answers, if given, would fully satisfy the Committee's requirements and standards.

A decision of the Committee not to ask these questions of this applicant is fully justified on the special facts and circumstances of this one case and in no way requires a determination of general policy with respect to all or any other cases. Although the decision in *In Re Anastaplo* seems to have been effectively repudiated by subsequent United States Supreme Court rulings in *Baird v. Arizona State Bar*, 400 U.S. 1,14 and *In Re Stolar*, 400 U.S. 23, the Committee has established its legal power, in respect to George Anastaplo, and there is no further principle involved other than the moral question of whether the Committee should, as a matter of judgment in his individual case, insist upon strictly enforcing the last full measure of some abstract legal right.

In the words of the majority opinion in *In Re Anastaplo*, 366 U.S. 82, 96 (1961), we submit that "the situation [is] an appropriate one for waiver of the Committee's continuing requirement, earlier enforced after the first Anastaplo hearings, that such questions must be answered."

Petitioners are informed and believe that the failure of a person of the high moral caliber of George Anastaplo to be admitted to the Bar of the State of Illinois casts public obloquy upon the Bar of this State as a whole and tends to place the legal profession in disrepute. It is in the interest of the integrity and self-respect of the Bar itself and in the interest of public confidence and respect in the legal profession that this Petition be granted and that the application for admission of George Anastaplo be granted in the manner suggested herein.

As Mr. Justice Black said, stating facts about said applicant which are not and cannot be disputed,

For this record shows that Anastaplo has many of the qualities that are needed in the American Bar. It shows, not only that Anastaplo has followed a high moral, ethical and patriotic course in all of the activities of his life, but also that he combines these more common virtues with the uncommon

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14. See Appendix X, Item A(iii).
virtue of courage to stand by his principles at any cost. It is such men as these who have most greatly honored the profession of the law—men like Malsherbes, who at the cost of his own life and the lives of his family, sprang unafraid to the defense of Louis XVI against the fanatical leaders of the Revolutionary government of France—men like Charles Evans Hughes, Sr., later Mr. Chief Justice Hughes, who stood up for the constitutional rights of socialists to be socialists and public officials despite the threats and clamorous protests of self-proclaimed superpatriots—men like Charles Evans Hughes, Jr., and John W. Davis, who, while against everything for which the Communists stood, strongly advised the Congress in 1948 that it would be unconstitutional to pass the law then proposed to outlaw the Communist Party—men like Lord Erskine, James Otis, Clarence Darrow, and the multitude of others who have dared to speak in defense of causes and clients without regard to personal danger to themselves. The legal profession will lose much of its nobility and its glory if it is not constantly replenished with lawyers like these. To force the Bar to become a group of thoroughly orthodox, time-serving, government-fearing individuals is to humiliate and degrade it. [366 U.S. 82, 114-16]

To those members of the Bar who have known Mr. Anastaplo and followed his activities and career over the intervening years, those words are as true now as when written by Mr. Justice Black. Since that time Mr. Anastaplo has had a distinguished career as a professor of Political Science and Philosophy at Rosary College, River Forest, Illinois, as a lecturer at the University of Chicago, and as an author, including a recent book, *Human Being and Citizen*, which establishes beyond peradventure his commitment to the Constitution of the United States.

WHEREFORE, it is prayed that the Committee grant this Petition and determine that, in the exercise of its discretion, it will *sua sponte* recommend to the Illinois Supreme Court the admission of George Anastaplo to the Bar of this State.

C. *Letter from George Anastaplo to Richard James Stevens, Vice-Chairman, The Committee on Character and Fitness, June 1, 1977.*

I should like, in response to your telephone inquiry of May 19, to elaborate upon my letter to you of February 14, 1977, particularly since I understand that your call was prompted in part by the fact that Calvin Sawyier has (evidently on his own initiative) filed with the Committee on Character and Fitness another petition suggesting I should be admitted to the Illinois bar. (I have been delayed in the response promised you by a trip East for a daughter’s college graduation.)

You referred, I believe, to certain "mechanical steps" I might have to take (or at least acquiesce in) in order for my admission to be arranged by the Character Committee pursuant to Mr. Sawyier's petition. It is, however, not realistic to expect anything of me at this time. That is, I do not intend, in the foreseeable future, to do anything at all to revive or advance in any way my applications of 1950 and 1957 for admission to the Illinois bar. Rather, I am obliged to stand by the announcement in my letter of October 13, 1961.
to the Supreme Court of Illinois, "... I do not anticipate any further attempt, on my own initiative, to secure admission to the bar of any State." What I say on this subject in that letter to the Supreme Court has been supplemented in various published statements of mine since then, including the two which I enclose.

Thus, I have not encouraged anyone to do anything on my behalf with respect to my admission to the bar. Nor have I discouraged others from doing what they believe appropriate, except that I have said, on more than one occasion, that there is much to be said for my continued exclusion from the bar—if only as a salutary reminder to the bar of how it can go wrong.

You wondered how I would respond if the Committee on Character and Fitness should, on its own motion, recommend my admission to the bar and if the Illinois Supreme Court should accept such recommendation—if, that is, I should be listed among those whose admission to the bar is routinely provided for by the Court from time to time. I can make no promises or predictions, except (1) to assure you that I would consider carefully whatever is done and (2) to observe, as I did in my February letter to you, that any unconditional invitation I can take seriously should be "spread on its records" by the Illinois Supreme Court.

What do I mean by this? I have been excluded from the Illinois bar for more than a quarter century on the basis of extensive condemnations spread on the public record (at 311 Ill. 2d 471 [1954], 18 Ill. 2d 182 [1959], 366 U.S. 82 [1961]). Any official action now worthy of respect would have to be one which made it clear, to anyone consulting the Illinois Reports, that the bar of this State had reconsidered my matter on its own motion, that the actions theretofore by the Character Committee and by the Illinois Supreme Court had been repudiated, and that I had been invited to take the constitutional oath as an attorney. Thus, it should be made evident, to anyone who consults hereafter the standard guides to citations (such as Shepard's) what had happened to my matter and how. Otherwise, a misleading, if not even disturbing, ambiguity would result from my admission to the bar.

Permit me to add the opinion that it would be a graceful note to have included in such a recorded order as I have described, however I may choose to respond to it, a provision that my admission to the bar should be deemed retroactive to November 10, 1950, the day when a young law school student was first so imprudent as to attempt to defend the principles of the Declaration of Independence in the face of dire threats by his Character Committee inquisitors.

I hope that you realize that my principal concern, in what I have said to you and others about my status at the bar, is with a view to the contributions the bar can make among us to constitutional government and the rule of law. I have long since had to abandon the notion that my own fortunes depend on whether I happen to be admitted to the bar of any State. The considerable damage done the past quarter century to my academic, as well as legal, careers is not likely to be undone now by anything the Illinois Supreme Court may be prevailed upon to do.
Even though this letter may do little more than make apparent to some of your colleagues on the current Character Committee what it was about me that has troubled successive committees over the last three decades, it should not close without an expression of my continuing appreciation for the good will exhibited both by Mr. Sawyier and by you.

D. Letter from Richard James Stevens, Vice-Chairman, The Committee on Character and Fitness, to George Anastaplo, September 20, 1977.

The Committee on Character and Fitness has before it a petition by Mr. Calvin Sawyier that a Certificate of Character and Fitness be issued to you. Some of the Committee Members feel that we should not proceed on this petition if Mr. Sawyier is acting against your wishes. Will you please let us know that you have no objection to the Committee proceeding on Mr. Sawyier's petition. We are not asking you to waive any rights that you may have nor are we asking you to commit yourself in advance to any position you might take.

E. Letter from George Anastaplo to Richard James Stevens, Vice-Chairman, The Committee on Character and Fitness, September 26, 1977.

You ask, in your letter of September 20, 1977, whether Mr. Calvin Sawyier is acting against my wishes in filing with the Committee on Character and Fitness a petition asking that a Certificate of Character and Fitness be issued to me.

I have not seen Mr. Sawyier's petition. I do not even know who, if anyone, has joined him in his endeavor. It is impossible for me to say precisely what my wishes are in this matter when I do not know what is said in the petition or how it is said.

One wish I do have, I can assure you, is to embarrass no one—no one in the bar, or on the Character Committee, or on the Illinois Supreme Court. I mention this since I have emphasized in my two letters to you heretofore that any invitation to join the Illinois bar that I can take seriously at this time would have to be “spread on the records” of the Illinois Supreme Court in the manner I described in some detail on June 1st. That this will be done by the Court is, it seems to me, highly unlikely—and in the circumstances, therefore, it might be best for everyone that nothing official be done at all.

When I say this I do not mean to disparage the Illinois bar authorities. I also think it highly unlikely that the United States Supreme Court will ever provide for that direct admission to its bar which I twice requested of it. See 349 U.S. 903 (1955); 366 U.S. 97, n. 20 (1961).

Please believe me that there is in all this, however, no immediate cause for concern. After all, I have had my day—or, rather, my decade—in court.
Indeed, it can be said, the decisions of my character committees and courts, for more than a quarter century now, may well have turned out for the best—for an intolerant bar, for law students [and faculty] in need of instruction, for shortsighted judges, perhaps even for an applicant who was not himself altogether innocent of self-righteousness.

A conference on constitutional law I attended in Los Angeles last week reminded me, in the spontaneous comments I heard from a number of eminent scholars and practitioners, that my case does happen to stand for something in this "post-Watergate era"—and that it would be best not to trifle with it at a time when all too many lawyers have been exposed as unduly self-seeking and sadly unprincipled.

In any event, I do not see that the mere issuance to me by your committee of a Certificate of Character and Fitness can do any genuine good at this time—and may even obstruct people's view of how things really are. I do consider my case something of a public resource with which I personally should be reluctant to tamper.


This will serve to notify you that the Committee on Character and Fitness of the First Judicial District advised the State Board of Law Examiners that you satisfy the character and fitness requirements of Supreme Court Rule 708 as of this date November 30, 1978.

Mr. Hendricks [Secretary of the State Board of Law Examiners] has been informed of your certification.


I have your letter of November 30, 1978, in which you report that the Committee on Character and Fitness has advised the State Board of Law Examiners that I am now recognized to "satisfy the character and fitness requirements" of the Supreme Court of Illinois.

Please let me know, at your convenience, how I might secure access to the Committee's file bearing upon, and perhaps illuminating for me, this most recent expression of opinion by the Committee with respect to my qualifications for admission to the Illinois bar.

My own eventual response to all this, depending of course on how the State Board and the Supreme Court act on your Committee's honorable initiative, should be governed by the guidelines set forth in my letters to you.

15. Mr. Stevens had been Vice-Chairman of the Character Committee in 1977. See Appendix VII, Items A-E. On Mr. Stevens, see Appendix IX, Item A(ii).

With best wishes for the Holiday Season, I remain,


Perhaps you will recall my bar admission efforts in this State since 1950—the "ill-fated" efforts dealt with by the Supreme Court of Illinois and by the Supreme Court of the United States in the decisions recorded at 3 Ill. 2d 471 (1954), 348 U.S. 946 (1955), 18 Ill. 2d 182 (1959), 366 U.S. 82 (1961).

I have recently been notified in writing "that the Committee on Character and Fitness of the First Judicial District [of Illinois] [has] advised the State Board of Law Examiners that [I] satisfy the character and fitness requirements of Supreme Court Rule 708 as of this date November 30, 1978." (A copy of this letter to me from the Committee is enclosed, as is my response to it.)

I have since been informed orally that this Committee certification (by a vote of 13-4) was entirely on the motion of the Committee itself. I have also been informed orally that, in addition to the routine notice of this certification supplied by the Committee of the State Board of Law Examiners, the Committee has taken the unusual step of supplying its notice of certification to the Supreme Court of Illinois as well.

Such notification of the Court seems to recognize the fact that the Committee has now acted (as I understand it) on essentially the kind of evidence which the bar authorities have always had relating to my qualifications and on the basis of which the Court has repeatedly acted heretofore to deny me admission.

It is only fair, then, that the Court be assured that my position remains unchanged: I have never answered the impertinent questions I originally refused to answer about possible political affiliations (in the Communist Party, the Ku Klux Klan, etc.); I continue to advocate "the right of revolution" set forth in the Declaration of Independence; and I continue to believe that the bar authorities of this State woefully misbehaved in denying me admission to the bar the past quarter century for what I have said and have refused to say.

The Court should also realize that I personally have added nothing to the old record in my case, nor have I authorized anyone else to do so. I have not seen whatever record there may now be. I have done nothing to encourage or to ratify recent developments. My opinion about these recent developments is set forth in the correspondence I have had the past two years with the honorable lawyer who is now the Chairman of the Committee on Character and Fitness. Copies of this correspondence and of the materials supplied with it are enclosed for the Court's information.

I particularly want to call to the Court's attention the fourth and fifth paragraphs of my enclosed letter of June 1, 1977:
You wondered how I would respond if the Committee on Character and Fitness should, on its own motion, recommend my admission to the bar and if the Illinois Supreme Court should accept such recommendation—if, that is, I should be listed among those whose admission to the bar is routinely provided for by the Court from time to time. I can make no promises or predictions, except (1) to assure you that I would consider carefully whatever is done and (2) to observe, as I did in my February letter to you, that any unconditional invitation I can take seriously should be "spread on its records" by the Illinois Supreme Court.

What do I mean by this? I have been excluded from the Illinois bar for more than a quarter century on the basis of extensive condemnations spread on the public record (at 3 Ill. 2d 471 [1954], 18 Ill. 2d 182 [1959], 366 U.S. 82 [1961]). Any official action now worthy of respect would have to be one which made it clear, to anyone consulting the Illinois Reports, that the bar of this State had reconsidered my matter on its own motion, that the actions theretofore by the Character Committee and by the Illinois Supreme Court had been repudiated, and that I had been invited to take the constitutional oath as an attorney. Thus, it should be made evident, to anyone who consults hereafter the standard guides to citations (such as Shepard's) what had happened to my matter and how. Otherwise, a misleading, if not even disturbing, ambiguity would result from my admission to the bar.

The third paragraph of my letter of June 1, 1977 and the final paragraph of my letter of September 26, 1977 (both of which letters are enclosed) reflect my continuing opinion that it would probably not be in the public interest for the Illinois authorities to provide for my admission to the bar at this time. These paragraphs read,

... I have not encouraged anyone to do anything on my behalf with respect to my admission to the bar. Nor have I discouraged others from doing what they believe appropriate, except that I have said, on more than one occasion, that there is much to be said for my continued exclusion from the bar—if only as a salutary reminder to the bar of how it can go wrong.

I do not see that the mere issuance by your committee to me of a Certificate of Character and Fitness can do any genuine good at this time—and may even obstruct people's view of how things really are. I do consider my case something of a public resource with which I personally should be reluctant to tamper.

Permit me to draw on still another paragraph from my enclosed letter of September 26, 1977, a paragraph which (it seems to me) also should be called to the attention of your colleagues:

One wish I do have, I can assure you, is to embarrass no one—no one in the bar, or on the Character Committee, or on the Illinois Supreme Court. I mention this since I have emphasized in my two letters to you heretofore that any invitation would have to be "spread on the records" of the Illinois Supreme Court in the manner I described in some detail on June 1st. That this will be done by the Court is, it seems to me, highly unlikely—and in the circumstances, therefore, it might be best for everyone that nothing official be done at all.
To say all that I have said on this occasion is not intended to repudiate, but rather to reaffirm, the concluding sentence of a letter I wrote on October 13, 1961, to the Chief Justice of the Supreme Court of Illinois (a copy of which is enclosed):

Should my position or temperament ever be recognized as useful to the administration of justice in this State, I trust the Illinois Supreme Court will not hesitate to call on me for any further contribution I might honorably make to constitutional government and the rule of law.

It should be clear from this letter today, as well as from the enclosed correspondence and related materials, that whatever is done now with respect to my status at the bar should be directed solely by a concern for the common good and hence for the integrity and reputation of the courts and bar of this State. And so I suggested, in my enclosed letter of February 14, 1977, that "someone who has been condemned in public for a quarter century should not be rehabilitated only in private."

Please believe me when I add that my own legal and academic careers are not likely to be significantly affected for better or for worse, at this stage of my life, by anything that the bar authorities of this State may now be moved to do or not do. In any event, it is far too late for me to begin thinking about my personal welfare in this matter.

I have been obliged to spell things out as I have in this letter to make sure that no one proceeds under any misapprehension as to what is and is not happening, as to what is and is not being said, as to what has and has not changed.


The decision of the Committee on Character and Fitness for the First Judicial District to certify George Anastaplo was initiated by the Petition of Mr. Calvin Sawyier, a former member of the Committee. Mr. Sawyier's Petition requested the Committee to reconsider the application of George Anastaplo on the Committee's own motion. The Committee held a hearing, October 26, 1978, at which Mr. Sawyier presented testimony of Sister Candida Lund, President of Rosary College and the present employer of George Anastaplo, and David Grene, a teacher of Philosophy at the University of Chicago who has been a colleague of Mr. Anastaplo and has known him for approximately twenty-five (25) years. The Committee was impressed by the unqualified endorsement given Mr. Anastaplo by both of these witnesses. The Committee at that meeting voted to reconsider the application of Mr. Anastaplo, and at a subsequent meeting held on November 30, 1978 voted to certify Mr. Anastaplo by a vote of 13 to 4.

You have informed me that the Court has raised the question as to whether the Committee acted properly in doing this. The Committee considered at great length the question as to whether the Committee had the authority to
act absent a new petition from Mr. Anastaplo and came to the conclusion that it did have such authority.

I believe I am properly reporting the Committee's discussion when I state that the Committee's members without exception were of the opinion that if Mr. Anastaplo presented a petition to reconsider his application, that such petition should be granted. The question which we debated was whether the Committee on its own motion could waive the requirement that a new petition be presented by Mr. Anastaplo. We decided it was not necessary to have such a petition before us and voted to reconsider his application.

Generally the Committee acts as if it has jurisdiction over an applicant until the applicant is sworn in. In one case recently before the Committee, the Committee voted to certify an applicant. After that vote, certain information came to me from a schoolmate of the applicant suggesting that the applicant had failed to provide accurate information in an application for a student grant. Without any discussion as to any procedural problem, the matter was re-opened, and I investigated the alleged misconduct. It appeared that there was no cause for withdrawing certification; but I felt certain that if cause had been found, the Committee would have felt justified in withdrawing the certification.

On another occasion the Committee had before it an application of a man who had been convicted of a crime and who was on probation for a period of years. The Committee continued the application until the probation was over and finally certified him after approximately two years.

The United States Supreme Court speaking through Justice Harlan for the majority stated, "We find nothing to suggest that he (Anastaplo) would not be admitted now if he decides to answer, assuming of course that no grounds justifying his exclusion from practice resulted. In short, petitioner holds the key to admission in his own hands." 366 U.S. 96-97.

The Committee's position is that there are two keys to unlock the door to Mr. Anastaplo's admission to practice. One is Mr. Anastaplo's willingness to give up his firm convictions as to his constitutional rights and his convictions as to the limitations of the Committee's authority to inquire into his political beliefs. The second key is the Committee's willingness to reconsider Mr. Anastaplo's entitlement to a certificate on the merits and grant him a certificate when it appears that he is a man of outstanding moral character. The Committee chose to use the second key.

I respectfully suggest that the Committee is not overruling the United States Supreme Court nor is it overruling the Illinois Supreme Court. It is deciding that it will not insist upon answers from Mr. Anastaplo which both Courts have held the Committee has the right to ask. The Committee by its action has waived such answers and has found that he has the requisite character and fitness to practice law in the State of Illinois.

For myself, I believe that the past actions of the Committee on Character and Fitness on the Anastaplo case have caused a significant impairment in the credibility of the entire Character and Fitness procedure. A man who has absolutely no blemish on his character and who had demonstrated great
courage in standing by his principles was denied a Certificate of Character and Fitness. Obviously something was wrong. Because of Mr. Sawyier's Petition, the Committee had the opportunity to correct this error and by a vote of 13 to 4 saw fit to do so. I sincerely hope that the Court can see the propriety, legality and wisdom of this decision and act on what I believe is properly before the Court.


I regret the delay in replying to your letter of January 26, 1979, but there was no opportunity to consider it prior to the convening of our March term. The Court has concluded that it would be inappropriate to act on this matter in its present posture. The decision of the United States Supreme Court was rendered on April 24, 1961, and the Court is of the opinion that it would be inappropriate to consider the matter on the basis of committee action taken 17 years later. It appears that the proper procedure would be for Mr. Anastaplo to apply to the Board of Law Examiners for admission in accordance with the Rules of this Court.

K. Letter from George Anastaplo to Richard James Stevens, Chairman, The Committee on Character and Fitness, April 5, 1979.

I understand that the Supreme Court of Illinois has rejected your committee's unprecedented recommendation with respect to my admission to the bar. But all I know about it is what is indicated in the Chicago Sun-Times editorial of March 29th.

I should like to have, in order to satisfy my curiosity as well as to complete my file on this subject, copies of whatever correspondence passed between the Court and the Committee (and especially, of course, the Court's announcement about how it would treat the Committee's recommendation).

A good deal can be said in favor of the proposition that things are now left pretty much as they should be. Citizens, including members of the bar, are left with the opportunity, if not even the obligation, to think about what all this means. You must believe me that my own personal fortunes in this matter, especially when so much can be learned about how things are and should be, do not matter much.

One regret I do have, as the current phase of this matter draws to a close, is that a record does not seem to be available of the testimony by Sister Candida Lund and Professor David Grene before the Committee. That, it seems to me, would have been valuable some day. Perhaps it would still be useful for someone, on behalf of the Committee, to recapitulate what they said (and to provide them an opportunity thereafter to amend the recapitulation). Again, I am thinking of what it would be good for the bar to
have and to think about. Even you must believe now that I am fully (and properly?) retired from the practice of law.

With thanks,

L. Letter from George Anastaplo to Calvin P. Sawyier, April 19, 1979.

I have been asked by a law journal to say something about the recent interest in my bar admission status. I should like to have, therefore, copies of whatever materials you have bearing on all this (and especially the petitions with which you triggered the activities of the past few years).

It is highly likely, I believe it is realistic to say, that nothing more will be done by the Committee about my status at the bar during my lifetime. And that may be just as well. "Rehabilitation" of me can take the form of something posthumous, such as an annual memorial lecture at the [University of Chicago] Law School (to remind law professors of how they should behave when their students are being harassed).

I appreciate very much everything you have tried to do.

APPENDIX VIII (1979)


WHEREAS, George Anastaplo is a resident of Illinois, a recognized scholar, and a respected professor and author in the field of political science and constitutional law; and

WHEREAS, George Anastaplo has passed the examination for admission to the Bar of the Illinois Supreme Court; and

WHEREAS, George Anastaplo's admission to the Bar was delayed by the failure of the Illinois Supreme Court's Character and Fitness Committee to certify him because, on moral grounds, he refused to repudiate the principles of the Declaration of Independence or to take the so-called "non-communist" McCarthy oath then in vogue; and

WHEREAS, the Illinois Supreme Court's Character and Fitness Committee has recently, at last, held a rehearing in George Anastaplo's case and has certified to the Illinois Supreme Court his good character and moral fitness for admission to the Bar; and

16. I have never seen any record of the Grene-Lund testimony.
WHEREAS, The Illinois Supreme Court has nevertheless refused to admit George Anastaplo to the Bar of this State; and
WHEREAS, George Anastaplo has not only followed a high moral, ethical and patriotic course but exemplifies in the highest degree the virtue, essential to the nobility of the legal profession, of standing by his principles at any cost; and
WHEREAS, The inability of a person of the high moral caliber of George Anastaplo to be admitted to the Bar of this State degrades the legal profession in Illinois and destroys public confidence in the whole process of professional qualification in this State; therefore, be it
RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE EIGHTY-FIRST GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, That this body of the Illinois General Assembly deliver this Resolution to the members of the Illinois Supreme Court and memorialize the members of that Court to recognize their error and to admit George Anastaplo to the Illinois Bar.

Adopted by the House of Representatives on April 27, 1979.

APPENDIX IX (1979-1980)


ONE'S CHARACTER IS ONE'S FATE?

i.

Since I was excluded from the Illinois bar originally in 1950, from the Soviet Union in 1960 and from Greece in 1970, I look forward with a curiosity not untouched by concern as to what 1980 will bring. Thus, I may especially need your support next year.

This is not to be taken, I hasten to add, as a covert announcement of my candidacy for the United States Senate, to say nothing of even higher office. Nor is any disavowal here of candidacy to suggest, I should also hasten to add, that I consider myself unqualified for such public service—but I have noticed that it takes awhile, indeed even decades, for influential people to

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17. My talk, Character and Freedom, made on December 15, 1975 in response to the presentation of an award to me by the Illinois Division of the American Civil Liberties Union, has been printed in Passion, Magnanimity, supra note 10, at 370-72. That was the Second Annual Harry Kalven Freedom of Expression Award. The award had been given the year before to Malcolm P. Sharp.
arrive at the same high opinion of myself that I have, and a political career necessarily marches to a faster drummer than that.

Also by way of preface is the acknowledgement that it is good to share this program today with my law school classmate, Abner Mikva, who is a much faster marcher than am I. He not only was one of four lawyers—the others were Leon Despres, Alexander Polikoff and Bernard Weisberg—who submitted in 1954 the first amicus brief on my behalf, but he also was most helpful (as a member of Congress) in having several of my articles about the reckless Greek dictatorship entered in the Congressional Record between 1967 and 1970. In fact, he did such a conscientious job as my publisher in Washington that I became persona non grata in Athens. Perhaps it is just as well that he has given up the publishing business for the Court of Appeals. Certainly, he should do us proud wherever he happens to be.

Finally, still by way of preface, is my observation that many of those who once condemned me as members of the Committee on Character and Fitness continue to thrive. Not a single one of them has ever repudiated publicly what he did to my career at the bar. From time to time, one of them dies unrepentant, but always in apparent prosperity—which would make someone less self-confident than I am wonder about what kind of a world this is anyway. Be that as it may, one of the inquisitors—perhaps the worst-behaved of the lot, it should be said—has even turned up (I have noticed from your program) as a no doubt respected member of your Tenth Anniversary Committee. But this is a festive occasion and hardly the time to call special attention to the bane of my life in the days of my youth. It suffices, in recalling such misguided men (whose principal punishment is to remain precisely themselves)—it suffices to invoke the Schiller poem, “Friend and Foe”: “Dear is my friend—yet from my foe, as from my friend, comes good; My friend shows what I can do, and my foe shows what I should.”

So much, then, by way of preface.

ii.

I do thank you for your award. It is for me a high honor, as well as a special pleasure, to have had this award presented by Calvin Sawyier. It is he (sometimes at the urging of my old teachers, Malcolm Sharp and Harry Kalven, and their old colleague in creative mischief, Elmer Gertz)—it is he, without any cooperation at all from me, who has been primarily responsible for reviving my bar admission matter from time to time during the past two decades. The generous Calvin Sawyier recently succeeded in enlisting in his intermittent crusade the determined decency of Richard James Stevens, of the present Committee on Character and Fitness, with the curious results

the past year in Springfield (both in the State Supreme Court and in the General Assembly) about which all readers of that useful journal, the Chicago Lawyer, know.

Had there been around Chicago in 1950 any substantial organization of your principles, dedication and connections—whether a bar association, a law school faculty, a daily newspaper or even a single distinguished law firm—things would probably have turned out differently then for that young man, so recently returned to civilian life from his wartime service as a flying officer, who dared defend the Declaration of Independence before a so-called Character Committee of the bar.

However that may be, much is to be said for leaving my status at the bar much as it has been for years now. I had my day, indeed my decade, in court and hence do not intend ever to reapply for admission to the Illinois bar. My present status is quite instructive for us all. Thus, as I have explained to the bar authorities of this State, "I do consider my case something of a public resource with which I personally should be reluctant to tamper." And, as I explained in 1977 in response to an inquiry from those authorities about my intentions, "Any official action now worthy of respect would have to be one which made it clear, to anyone consulting the Illinois Reports, that the bar of this state had reconsidered my matter on its own motion, that the actions theretofore by the Character Committee and by the Illinois Supreme Court had been repudiated, and that I had been invited to take the constitutional oath as an attorney. Thus, it should be made evident, to anyone who consults hereafter the standard guides to citations (such as Shepard's) what had happened to my matter and how. Otherwise, a misleading, if not even disturbing, ambiguity would result from my admission to the bar." Since it is hardly likely that our court can bring itself, with or without still another application on my part, to enter in the Illinois Reports the required repudiation of its reported decisions heretofore with respect to me, I should be considered permanently retired from the practice of law. Besides, who is prepared to demonstrate that things have not turned out for the best in all this?

iii.

Your award, if it means anything, testifies that I am being commended now for having been fortunate enough to have seen a quarter century ago what only a few other Americans trained in the law could see about the Declaration of Independence and its right to revolution, and about related issues of that desperate period in the life of our country.

My appreciation for your award—my appreciation, if it is to mean anything—should take the form of continuing to comment in the years ahead upon what I consider questionable in what all too many of our fellow-citizens believe about the issues of the day. Permit me, as a token of future performance, to draw upon my reputation as a constitutional scholar as I indicate reservations about three opinions that the "better" lawyers and
judges among us hold these days. The few minutes I am limited to permit me to do little more than to present bare conclusions:

My first dissenting opinion is that we now face here in Chicago, in the prospect of mandatory busing of public school children, a tiresome ritual which promises to do little in this city for education and the invaluable neighborhood school, for racial justice, or for ordinary people's faith in the Constitution, bureaucrats and federal judges. It would make far more sense, and hence be a far better use of the passions and resources which forced busing will waste, to do something (if only in the form of an urban equivalent of the Civilian Conservation Corps) about the scandalous unemployment rate, especially among the young, in the remarkably patient Negro community.

My second dissenting opinion is that the virtually unlimited access to abortion now available in this country is an unconscionable state of affairs. The Roman Catholics among us are substantially correct in their deep opposition to what we now have, even though they (because of a misunderstanding of the dictates of natural law) have long been misled by their leaders with respect to birth control. Particularly serious here is the unwarranted reading of the Constitution by the United States Supreme Court, which has left local governments paralyzed in any attempt to deal compassionately but firmly with our dreadful abortion epidemic (which represents, among other things, a callous exploitation of women and an endorsement of mindless gratification).

My third dissenting opinion is rooted in the argument, which I have made again and again in my publications, that the primary purpose of the First Amendment is to protect our right and duty to discuss fully, as a sovereign people, the political questions that come before us from time to time. (The "clear and present danger" test is, in these matters, simply without support in the Constitution.) Among the questions always open for discussion is that of what the community should do to train itself and its citizens for self-government and for a decent life together. Certainly, no community is obliged, in the name of liberty and self-expression, to allow itself to be corrupted by the demented, the vulgar, the selfish, the thoughtless or the doctrinaire.

Each of the three dissenting opinions I have just shared with you requires an extended argument—which many of you are better equipped to develop, if challenged to do so, than am I. I hope that that which I have said does challenge some of you. Serious thinking about the matters I have touched upon today is sorely needed among men and women in public life. In any event, I have intended, by making these remarks, to express proper appreciation both for your generous award and for your dedication to justice and

19. See Human Being and Citizen, supra note 1, at 46-60. See also Lund, At Home in the Church, in J. Delaney, Why Catholic? 105-06 (1979).
the common good. After all, is not the most appropriate appreciation someone in my circumstances can exhibit that of continuing to remind people such as you from time to time of the ethical, political and constitutional principles upon which we all so much depend as students of the law? I can only hope that I have indeed earned, and continue to deserve, your recognition as a colleague of sorts whose primary concern in what I have said in my public capacity over the past quarter century has been for the moral fitness, the informed sensibility, and the enduring security of that troubled nation to which a vulnerable world must look for prudent leadership if it is not to perish.20

B. Letter from Malcolm P. Sharp to the Norwegian Nobel Committee, January 10, 1980.21

In a world of ever-increasing consciousness of individual rights, and the concomitant dangers of the misguided self-interest and anarchy that threaten our globe today, the commitment to freedom through the rule of law has never been more crucial. With this in mind, we respectfully submit the name of George Anastaplo as a nominee for the Nobel Peace Prize.

George Anastaplo first gained prominence in America through his courageous stand before the legal power structure during the McCarthy era of national intimidation (see attached). Political philosopher, professor, and prodigious writer on freedom, virtue, and the common good, his way of life, on a microcosmic level, is a model for the world community in general.

His latest book, HUMAN BEING AND CITIZEN, which we enclose for your study, reflects this way of life—a commitment to suggest to partisans in controversial situations what should be said for the other side. It includes what

20. This talk, Character and Fate, was scheduled for publication first in the November 1979 issue and then in the December 1979 issue of the Chicago Lawyer. (The journal was then being published under the auspices of the Chicago Council of Lawyers.) In fact, I read proofs for publication before the talk was twice dropped at the last minute without any explanation.

It seems that someone in a position of influence with this journal did not approve of some of the things I had said in the third section of my talk. (Publication of the talk had been arranged at the request of various members of the Chicago Council who had heard it.) I am reminded of an observation to Parliament by John Milton in the opening pages of his Areopagitiea: "For he who freely magnifies what hath been nobly done, and fears not to declare as freely what might be done better, gives ye the best cov'nant of his fidelity; and that his loyalest affection and his hope waits on your proceedings. His highest praising is not flattery, and his plainest advice is a kinde of praising . . . ."

21. Mr. Sharp, identifying himself as Professor Emeritus of Law at the University of Chicago and Professor of Political Science at Rosary College, submitted this letter "on behalf of the Committee Proposing George Anastaplo for the Nobel Peace Prize." On Mr. Sharp, see the obituaries published in the August 15, 1980 issues of the New York Times, the Chicago Tribune, and the Chicago Sun-Times.

Additional materials and other letters about me have been submitted annually by the Committee since Mr. Sharp's inaugural letter in 1980. I have not seen any of these letters before they were submitted. See Apologia, supra note 3, at 329-30.
he said to the rulers of Russia when he was expelled from that country for protesting harassment of another tourist; to Greece in the crucial year of 1968 when, as a guest at a state dinner in Athens, he told the ruling Greek Colonels that their despotic tactics had alienated the populace (for this he was barred from Greece); to the U.S. Government when he warned that America’s misguided support of the Greek junta would lead to alienation of that NATO ally (it did); to the Supreme Court of the United States when, as a young law graduate in 1951 he reminded an intimidated Court of the meaning and importance of law (for this he was barred from practicing law); to Canadians about Quebec Separatism.

Like Socrates, his philosophical progenitor, he has made a career of questioning nearly everyone he talks to. "What is Virtue? What is Justice? What is a wise man?" Of scientists who invite him to speak he asks: "How does a good man come to be? What kind of man is likely to develop as a result of our present opinions and approach?" And though this neo-Socrates was sentenced to a figurative drinking of the hemlock, he continues the role he has carved out for himself, a role seldom played in our time—that of philosopher and truth-teller. He has taken the Quaker principle of "speak truth to power" and brought it back to the Socratic principle of speak truth to all—at least as much as they can comprehend. To activists he warns, "Give careful thought to the consequences of what you do"; to scholars, "Translate your private thoughts into public action."

Though a salient writer on the enduring questions that have historically engaged the great minds of the centuries, Dr. Anastaplo’s reputation and influence among us do not rest on the works he has published. It is as teacher and scholar that he has made his mark; as midwife to the ideas of students and colleagues. The largeness and depth of his vision bring out in others the best of what they yearn to say or do. He sees in the foibles of lesser minds promise of future achievement rather than irretrievable loss. That is to say, he understands the conditions for learning to be ever-present, the power of the intellect never entirely absent.

The commitment to the rule of reason as a bridge that unites diverse peoples and nations in peaceful coexistence is an ideal that has beckoned and eluded man since time immemorial. The world’s religions have promised it, philosophers have pursued it. If ever it is to succeed, it will be through the efforts of the quiet heroes of the world, those rare and exceptional individuals who, by precept and example, keep the sane and steady voice of reason alive in the wilderness. We have seen “the year of the child.” Why not now, “the year of the quiet hero”? Recognition by so prestigious a body as the Nobel Peace Committee would go far in encouraging emulation of what is best in and for the world.

We enclose for your study a limited selection of biographical and bibliographical material, divided into three categories: (a) World Affairs, (b) Domestic Affairs, and (c) Published Works and Book Reviews. The latter number in the hundreds and can be supplied upon request.
A. Sampling of letters received by the magazine editor in response to Andrew Patner, "The Quest of George Anastaplo," Chicago, December 1982.

i. Letter from Pavlos Zannas, Athens, Greece.

Mrs. Maro Seferis, the wife of the late George Seferis, Nobel Prize for Literature, has received the article on George Anastaplo, published in the December 1982 issue of "Chicago", that you were kind enough to send her. I was asked to give you her comments.

Mrs. Seferis was very interested in reading "The Quest of George Anastaplo," as she and her husband had the chance of meeting him. She remembers that George Seferis commented on his personality and integrity. Anastaplo's active role against the regime of the colonels, during the 1967-1974 period, and the support he gave to the Greek cause and the case of the political prisoners of that time, had particularly impressed and touched George Seferis. They met and had private discussions on this subject in Athens at the poet's house, as Mrs. Seferis remembers, although she was not present herself.

Mrs. Seferis thanks you warmly for sending her this article.

I would like to take advantage of this occasion to express, as a political prisoner of that period, as a writer and as a citizen involved in the cause of human rights, the impression that the "Anastaplo case" has had on me and my admiration for this persistence in the just cause of a basic principle, regardless of the consequences.

ii. Letter from Harry Mark Petrakis, Dune Acres, Indiana.

Anyone who has been privileged to know George Anastaplo will applaud your discriminating story about him. My lawyer friends would admit there are an abundance of lawyers, but there is only one Anastaplo. His teaching and writing benefit us all with his mature, clear vision of the past and the present. I suspect he and his books will be remembered long after the names of his inquisitors and detractors are forgotten.


We in our family know very well what George Anastaplo has gone through. My wife, Sara Baird, did the same thing and for identical reasons. She too refused, purely out of principle and a devotion to the Constitution, to answer

similar questions posed to her by the State Bar of Arizona. Even though she was number one on the Arizona bar examination, she was refused admission solely and exclusively because she believed that the bar examiners were violating the First Amendment.

A long journey began, very similar to that of George Anastaplo. The Arizona Supreme Court affirmed the action of the Bar Committee and the United States Supreme Court agreed to review the case.

Relying strongly on the decision by the United States Supreme Court in Anastaplo's case, the State Bar of Arizona argued that it should be permitted to inquire into the political beliefs of applicants in order to decide whether these beliefs would be acceptable to the examiners. The case was first argued in 1969 but the United States Supreme Court could not reach a decision and therefore asked that the case be reargued the following term. After another argument in Washington, a decision was finally rendered in early 1971.

Justice Black wrote the majority opinion and ordered the Arizona Supreme Court to immediately admit Sara Baird to the State bar. The effect was to overturn the Anastaplo case and protect the private political views of bar applicants and lawyers. As a result of Baird v. State Bar of Arizona, Anastaplo could gain admission to the Illinois bar, but his reasons for not himself applying now are very compelling to me.

During our battles, we corresponded regularly with Anastaplo and have read many of his works. He stands in a continuing chain of courageous and principled citizens who make it possible for the rest of us to enjoy the Bill of Rights.

iv. Letter from Representative Barbara Flynn Currie, Chicago, Illinois

The Quest of George Anastaplo (by Andrew Patner, December) captured the essence of George himself, the time of his initial travail, and the time of our own. An institution that is not prepared to recognize and rectify past error is, at some level, gearing up for more.


Chicago has rendered a great public service in publishing the interesting article on George Anastaplo's exclusion from the Illinois bar. Twice Anastaplo came within one judge's vote of being admitted, once in the United States Supreme Court and once in the Illinois Supreme Court. Today, I think we can find that one vote. It is high time that we improved the Illinois bar by ceasing to exclude him. If no one else will move to admit him, I will do so myself, fully realizing after 32 years of rejection, George Anastaplo might decide that the Illinois bar itself may lack sufficient character and fitness for him to join.


Except for the media, the Anastaplo matter ended in 1979 (The Quest of George Anastaplo, by Andrew Patner, December). If Anastaplo wants to be
a lawyer he can go about it in exactly the same way that all of us who are Illinois lawyers today obtained our licenses. If he prefers to be a "martyr," then that's his business and not mine.


In 1972 I sat for the Illinois Bar Examination, enjoyed a brief character and fitness interview, and was sworn in as a member of the Illinois bar. I was not called upon to defend an important constitutional principle, delaying the opportunity to earn my livelihood as a lawyer during an arduous climb to the Supreme Court. Others had already made that sacrifice, beginning with George Anastaplo.

I am not aware of any other Illinois lawyer who "went about it in exactly the same way." Those coming before chose not to drink from that particular cup, and to those coming years later, it was never offered. The suggestion that Mr. Anastaplo should now "go about it in exactly the same way that all of us who are Illinois lawyers today obtained our licenses" is an insult both to Mr. Anastaplo and the principle he so courageously defended.

We swore to defend the Constitution. George Anastaplo did so without the obligation—and without the rewards—of that oath. We all owe him our thanks, and the Illinois Bar should forget old disputes and belatedly express its appreciation to Mr. Anastaplo for his great service in taking those first difficult steps.

As a member of the Illinois Bar and the Illinois State Bar Association, I would have preferred that your organizational position had not accompanied your name in the February Chicago Magazine. You are certainly free to express your views (freer, for the sacrifices of people like Mr. Anastaplo) but I would hate to think that the general readership might equate your views with those of the membership.

I do not care to air my disappointment with your letter in an already too protracted magazine debate, but felt compelled to share them with you nonetheless.

Whatever Mr. Anastaplo's feelings concerning admission to the bar might be today, he has earned them. Our only appropriate role is to thank him.

APPENDIX XI (1983)


The next subject of discussion was the case of George Anastaplo. Elmer Gertz will draft for the next meeting a letter that the Council might send to the ISBA with respect to a position on this issue.

A very heated discussion was had in the Committee concerning George Anastaplo and whether there should be any action recommended by the Council to the Board of Governors concerning his admission to the Bar. Gertz made a motion which was seconded by Giampietro as follows:

That the Council recommend to the Board of Governors of the ISBA that they request the Illinois Supreme Court, on its own motion, to reconsider its earlier action denying admission to the Bar of George Anastaplo and to recognize the grave injustice done to him and the Bar.

The motion passed 6 to 1.


The case of George Anastaplo continues to trouble the conscience of the bar and courts and the people of Illinois. Here is a man of great intelligence, courage and integrity, so highly principled that he refused to bow to expediency by answering questions that he deeply believed to be constitutionally impermissible. Everyone, including members of the Admissions Commission and the judges of the Supreme Court that refused to admit him to the practice of law, knew that he was not a communist or subversive in any way, and that, indeed, he was wholly dedicated to the cause of democracy, for which he fought bravely in a time of national stress. He has since then showed his utter devotion to our country and to freedom of conscience for all people. This has been recognized by such highly respected institutions of learning as the University of Chicago, Loyola University, Southern Methodist University and Rosary College, and demonstrated in his books and other writings.

Anastaplo’s attitude is as highly principled today as it was in the past. He believed that since it was the Supreme Court that improperly barred him from the practice of law, it is incumbent upon that court, on its own motion and without effort on his part, to correct that grievous error. Again as a matter of principle, he will not grovel in order to correct an injustice. He should not be expected to do so; indeed, he should be honored for his attitude. It will be to the eternal honor of our State if the Supreme Court now says what is patent, that it erred when it denied a license to Anastaplo and grants him forthwith the right to practice law. He will distinguish our great profession if, at long last, he, an exemplary student and advocate, joins us.

We urge our Supreme Court to take this too long delayed step. We urge the Illinois State Bar Association to request the Court to do so. No technicality should stand in the way of correcting a grave injustice.
D. Excerpt from the Minutes of the meeting of the Board of Governors, The Illinois State Bar Association, July 15, 1983.

The Council of the Individual Rights and Responsibilities Law Section has recommended that the Board take certain actions in relation to the admission to the bar of George Anastaplo. Motion Mirza/Lane that the Board of Governors request the Illinois Supreme Court to reconsider its earlier action denying admission to the bar to George Anastaplo. Substitute motion DuCanto/DeMarco that the Board go on record with the Supreme Court that if Mr. Anastaplo were to make application for admission that the Board urge the Court to accept such application. Motion failed 10-11. Motion Velde/DeMarco to table discussion of the subject. Motion to table failed. The main motion carried.


At its meeting on July 15 the Board of Governors considered a request of its Individual Rights and Responsibilities Law Section Council concerning the Admission to Practice of George Anastaplo. The resolution adopted by the Board is as follows:

BE IT RESOLVED, that the Board of Governors of the Illinois State Bar Association requests the Illinois Supreme Court to reconsider its earlier action denying admission to the Bar to George Anastaplo.


(Springfield, IL, July 25, 1983) The Illinois Supreme Court has been asked to reconsider its decision nearly 30 years ago to deny a law license to George Anastaplo. The request was made in a letter to the Supreme Court by the Illinois State Bar Association.

Anastaplo graduated from the University of Chicago Law School in 1950, passed the Illinois bar exam, and applied for admission to the bar. His application was denied by a committee of the Supreme Court because of his refusal to answer the committee's questions about whether he belonged to the Communist Party. Answering such questions was then a pre-admission requirement, since dropped by the Supreme Court.

No evidence was presented to the committee that Anastaplo was, in fact, a communist. Chicago attorney Elmer Gertz, who urged the State Bar to support Anastaplo at a meeting last week, said Anastaplo's loyalty to the country was never questioned.

Gertz said, "Everyone, including the members of the admission committee and the judges of the Supreme Court that refused to admit him to the
practice of law, knew that he was not a communist or subversive in any way, and that, indeed, he was wholly dedicated to the cause of democracy, for which he fought bravely in a time of national stress."

Prior to beginning law school in 1948, Anastaplo had been in the Army Air Corps during World War Two, volunteering at age 17.

When asked questions about his political beliefs and whether he was a member of the Communist Party, Anastaplo refused to answer on his belief that the questions were constitutionally impermissible.

A special committee of the State Bar studied the Anastaplo matter several years ago. State Bar President Al Hofeld of Chicago says, "Mr. Anastaplo told the committee at that time that he did not choose to ask the Court for something he felt was wrongly denied him, and he asked the State Bar not to intervene on his behalf."

"It is obvious that a mistake was made," according to Hofeld. "He may choose to ignore this gesture, but we feel the record should be corrected, publicly, and that Mr. Anastaplo need not return to the Court and ask it to reconsider its previous action. Therefore, the Illinois State Bar Association is asking the Supreme Court to take the unusual step of reversing its previous action."

Since being denied a law license by the Supreme Court in 1954, Anastaplo has pursued a teaching career, and is recognized as a constitutional law scholar. He teaches at Loyola University in Chicago.

"We believe that he should not have been denied a license because of his principled refusal to answer these questions," Hofeld said. "We are not taking this action for Mr. Anastaplo's sake, but for the sake of the legal profession, which should be able to admit past mistakes and hold its head high."

G. Letter from George Anastaplo to the Chief Justice, The Supreme Court of Illinois, August 8, 1983.

It has recently come to my attention that the Board of Governors of the Illinois State Bar Association adopted on July 15, 1983, the following resolution:

BE IT RESOLVED, that the Board of Governors of the Illinois State Bar Association requests the Illinois Supreme Court to reconsider its earlier action denying admission to the Bar to George Anastaplo.

This generous action on the part of the Illinois State Bar Association was taken without any action at all on my part, just as have other actions by other organizations in the years since my matter was disposed of in the Supreme Court of the United States in 1961.

There are no doubt available in the files of your Court copies of various letters and materials I have had occasion to send your Court over the years in which I have explained that I am taking no action on any matter. I should like, nevertheless, to repeat a statement I made on this subject about five
years ago. I draw for this purpose on a passage in an article I wrote for the
National Law Journal, June 18, 1979, at pages 21, 33. (A copy of this article
is enclosed.) The passage I refer to is the following:

I had personally prosecuted my own appeals from 1950 to 1961 (including
oral arguments in Springfield and Washington) and considered myself
permanently retired (after 1961) from the practice of law. Others, however,
continued (on their own initiative) to act on what they considered my
behalf, principally Calvin P. Sawyier, a partner in the Chicago law firm
of Winston & Strawn. Mr. Sawyier had been one of the dissenting members
of the Character Committee back in 1957-1959. He tried from time to
time to have the Committee reconsider its refusal of a recommendation,
but without success.

Then, in 1977, still another Sawyier petition found a member of the
Committee, Richard James Stevens, particularly receptive. Mr. Stevens,
who was soon to become Chairman of the Committee was prepared to
push for my admission if I would comply with the "technical" requirement
of reapplying. I explained to him that I did not intend ever to reapply,
that the Committee (if it liked) could do whatever it thought right without
any cooperation from me. I also indicated "that there is much to be said
for my continued exclusion from the bar—if only as a salutary reminder
of the bar of how it can go wrong."

I indicated as well that, in any event, the only action by the Committee
and the Illinois Supreme Court I could take seriously was one that placed
clearly on the record whatever invitation the bar authorities held out to
me. I explained: "What do I mean by this? I have been excluded from
the Illinois bar for more than a quarter century on the basis of extensive
condemnations spread on the public record (at 3 Ill. 2d 471 [1954], 18 Ill.
2d 183 [1959], 366 U.S. 82 [1961]). Any official action now worthy of
respect would have to be one which made it clear, to anyone consulting
the Illinois Reports, that the bar of this State had reconsidered my matter
on its own motion, that the actions theretofore by the Character Committee
and by the Illinois Supreme Court had been repudiated, and that I had
been invited to take the constitutional oath as an attorney. Thus, it should
be made evident, to anyone who consults hereafter the standard guides to
citations (such as Shepard's), what had happened to my matter and how.
Otherwise, a misleading, if not even disturbing, ambiguity would result
from my admission to the bar."

I trust that nothing I say here, or that I have said elsewhere, is interpreted
as intending in any way disrespect for your Court. I do appreciate the efforts
made on my behalf by public-spirited citizens from time to time. But I
believe I owe it to your Court to state once again where I stand in this
matter.

I trust, also, that nothing I say here is taken as an effort on my part to
suggest what your Court should do now. I merely try to make clear what
my own position is.
Permit me to reaffirm still another sentiment I have expressed from time to time: should your Court ever decide that it can make use of my services in any way, I would be glad to do what I properly can to contribute to the administration of justice in this State.


I commented in my letter to you of August 8, 1983 (a copy of which is enclosed) upon a resolution adopted July 15, 1983 by the Board of Governors of the Illinois State Bar Association requesting "the Illinois Supreme Court to reconsider its earlier action denying admission to the Bar to George Anastaplo."

I also enclose samples of discussions which have appeared in the press bearing on these matters. (The samples are taken from the *New York Times* of September 11 and from the *National Law Journal* of August 22 and September 12.) These discussions reflect, among other things, my continuing opinion that my exclusion from the bar should be left alone, serving thereby as a salutary reminder of what can go wrong when the bar, law schools and judiciary do not conduct themselves as they should.

In any event, permit me to indicate again, as I have several times before, that the only action by the Illinois Supreme Court which I personally could take seriously is an order recorded in the Illinois Reports and in the Northeastern Reporter—an order which made it clear, to anyone consulting (by means of Shepard's) the orders and opinions of the Illinois Supreme Court with respect to me, that the bar of this State had reconsidered my matter on its own motion, that the actions theretofore by the Committee on Character and Fitness had been repudiated, and that I had been invited to take the constitutional oath as an attorney.

My reasons for taking this position are suggested in my letter to you of August 8, as well as in previous letters and in other materials prepared by or about me. My own publications, in which I have had occasion to discuss these matters at length, include the following books:

1) *The Constitutionalist: Notes on the First Amendment* (Dallas, Texas: Southern Methodist University Press, 1971);
2) *Human Being and Citizen: Essays on Virtue, Freedom and the Common Good* (Chicago: Swallow Press, 1975);

Your colleagues and you may be interested to learn that I am currently Professor of Law, Loyola University of Chicago; Professor of Political Science and of Philosophy, Rosary College (on leave); and Lecturer in the Liberal Arts, The University of Chicago. My bar admission case may be found, of course, at 3 Ill. 2d 471 (1954), 18 Ill. 2d 183 (1959), 366 U.S. 82 (1961).
Once again, I trust that nothing I say here, or that I have said elsewhere, is interpreted as intending, in any way, disrespect for your Court. I trust, also, that nothing I say here is taken as an effort on my part to suggest what your Court should do now or hereafter.

In short, I am merely trying to make clear what my own position is with respect to these matters.


Permit me, please, to supplement my letters to you of August 8th and September 19th (with respect to the resolution by the Board of Governors of the Illinois State Bar Association requesting “the Illinois Supreme Court to reconsider its earlier action denying admission to the Bar to George Anastaplo”).

I should like, that is, to provide your colleagues and you copies of a transcript which has been prepared of a discussion earlier this month (either on September 12th or on September 19th), on National Public Radio—a discussion of the status of my bar admission matter here in Illinois. This transcript includes, in the notes on page 5, a list of recent publications bearing on the matter since the issuance by the Illinois State Bar Association of its news release on July 15th.23

You may want these materials and references for your files.

23. The publications referred to in my letter to the Chief Justice were:

i) Illinois State Bar Association, State Bar asks Supreme Court to reconsider decision of 1954, July 15, 1983 (News Release);

ii) Kaberon, ISBA asks justices to license Anastaplo, Chicago Daily L. Bull., July 22, 1983, at 1, col. 2;

iii) INC. column (by Sneed & Lavin), Chicago Tribune, July 24, 1983, at 2, col. 1;

iv) Anastaplo, A reminder to Illinois Bar Association, Chicago Tribune, Aug. 7, 1983, § 4, at 2, col. 4 (letter to the editor);

v) Gelman, Anastaplo’s 1951 bar application is back to state supreme court, S. Illinoisan, Aug. 21, 1983, at 22;

vi) Finley, Bar Assn. trying to get prof a law license—32 yrs. late, Chicago Sun-Times, Aug. 22, 1983, at 10, col. 3;

vii) Rani, 30 Years Have Passed, But License Still Sought, Nat’l L.J., Aug. 22, 1983, at 8;

viii) Justice for Anastaplo redeems legal system, S. Illinoisan, Aug. 25, 1983 (editorial);

ix) Anastaplo, Legal Odyssey, Chicago Sun-Times, Sept. 1, 1983 at 4 (letter to the editor);

x) Cohen, Professor of Law Is Content Without License to Practice, N.Y. Times, Sept. 11, 1983 at 13, col. 7 (Midwest ed.), N.Y. Times, Sept. 11, 1983, at 30, col. 4. (This story appeared, in a somewhat more expanded form, as an Associated Press story, in other newspapers in the United States.);

The Supreme Court has considered your letter of July 20, 1983 concerning George Anastaplo. Your request was extremely unusual in that nothing was filed with the Court and the requested action came simply in the form of a letter. This case has been closed for more than twenty years. I know of no accepted procedure that would authorize proceeding in such a manner. In effect, there is nothing pending before the Court upon which it can act.

The Character and Fitness Committee of this Court originally denied Mr. Anastaplo's admission to the bar. He then filed a petition and an appeal from the Committee's order in this Court which denied the relief requested. (In re George Anastaplo (1954), 3 Ill. 2d 471.) The Supreme Court of the United States denied certiorari. (Re George Anastaplo (1955), 348 U.S. 946, 99 L.Ed. 740, 75 S. Ct. 436.) Mr. Anastaplo's motion for leave to file application for admission to the bar of the United States Supreme Court was also denied. Re George Anastaplo (1955), 349 U.S. 903, 99 L.Ed. 1240, 75 S. Ct. 575.

Thereafter, the United States Supreme Court rendered its decision in Konigsberg v. The State Bar of California (1957), 353 U.S. 252, 1 L. Ed. 2d 810, 77 S. Ct. 722. Konigsberg had been denied admission to the State Bar of California and the United States Supreme Court remanded his case to the California Supreme Court for a hearing to determine whether or not he should be admitted to practice law in California. Following this decision, Mr. Anastaplo filed with the Character and Fitness Committee a supplementary petition for rehearing of his application for admission to the bar. The Committee denied his petition without a hearing and this court remanded the matter to the Character and Fitness Committee for a hearing, in light of the United States Supreme Court's holding in Konigsberg. The Character and Fitness Committee conducted five hearings, beginning February 28, 1958 and ending May 19, 1958, following which the Committee denied Mr. Anastaplo's application for admission. This court reviewed the denial of the Character and Fitness Committee and reaffirmed its earlier holding and confirmed the report of the Committee. In re Anastaplo (1959), 18 Ill. 2d 174.

In the meantime, in Konigsberg a hearing had been held by the California Committee which had again denied the applicant's admission to the bar, and the Supreme Court of California had refused to review the holding and denied the petitioner's motion for admission. Konigsberg v. The State Bar of California (1959), 52 Cal. 2d 769.

The United States Supreme Court granted certiorari in both Konigsberg and Anastaplo. In these cases, the Supreme Court considered the constitutional issues involved and affirmed the decisions of both the California Supreme Court and the Illinois Supreme Court. See Konigsberg v. State Bar of California (1961), 366 U.S. 36, 6 L. Ed. 2d 1105, 81 S. Ct. 997; In re
George Anastaplo (1961), 366 U.S. 82, 6 L. Ed. 2d 135, 81 S. Ct. 978.

Mr. Anastaplo's case has thus been considered by this court twice and by the United States Supreme Court. There must be finality to litigation and this court has previously indicated that there is nothing pending before this court upon which it can act. If Mr. Anastaplo desires to refile his petition for admission to the bar, the same will be processed as is any other petition of similar nature.

Justice Seymour Simon is of the opinion that the court should reconsider its previous decision and admit Mr. Anastaplo to the practice of law.

APPENDIX XII (1983-1984)


Alex Kotlowitz: The year was 1950, the same year that Senator Joe McCarthy charged that Communists had infiltrated the federal government. Twenty-five-year-old George Anastaplo had just graduated from the University of Chicago Law School. Then, aspiring lawyers were required to take both a written and an oral exam for admission to the Illinois bar, and Anastaplo appeared before the Illinois Supreme Court's Committee on Character and Fitness.

George Anastaplo: One member of the Committee began by asking me whether I had an opinion as to whether members of the Communist Party were eligible to practice law . . . I responded to the effect that I saw no reason why membership in the Communist Party in itself should disqualify anyone from the practice of law . . . Then one of them said, "If you're going to talk that way, you're going to have to tell us whether you are a member of the Communist Party." . . . I asked, "Do you think that is a proper question to ask anyone, whether he is a member of the Communist Party?" They asked, "Yes, we're investigating your character. If you don't tell us, we can't certify you."25

24. This is a transcript of the entire segment about the Anastaplo bar admission case on the Morning Edition broadcast, Sept. 19, 1983. The program, prepared by Alex Kotlowitz, originated in Chicago.

The previously-taped portions of this broadcast include all of the quotations from George Anastaplo, Edmund A. Stephan and Albert Hofeld. These three participants were interviewed separately by Mr. Kotlowitz.

25. The full passage on the tape from which Mr. Kotlowitz took his report by me of my first hearing before a two-man subcommittee of the Character Committee (in November 1950) is as follows:

Each subcommittee [of the Committee on Character and Fitness] was pretty much on its own and would ask questions [of applicants] according to its own interests. It was a matter of chance, then, what questions one was asked by the committee
Kotlowitz: And with that, Anastaplo began a rugged eleven-year battle to become an attorney in the State of Illinois. The Character and Fitness Committee denied his admission to the bar; so seven years later, in 1957, he reapplied. Edmund A. Stephan, now a prominent Chicago attorney, chaired that committee and voted to refuse Anastaplo entrance.

Edmund A. Stephan: I remember one final remark he made. When the hearings concluded, I said, “Mr. Anastaplo, do you have anything further to say? I’m about to terminate the hearing.” And he stood up and said, “I do have one final thing to say. After listening to you gentlemen for six weeks, I’ve concluded that the bar of Illinois needs me more than I need it.” And he turned on his heel and walked off. I don’t think I saw him then for maybe ten or fifteen years.

Kotlowitz: An obstinate and principled Anastaplo appealed his case to the State Supreme Court and eventually, in 1961, to the U.S. Supreme Court. After both courts turned down his appeal, Anastaplo decided to let matters drop. But periodically the case surfaces, as a searing reminder of this country’s bout with McCarthyism. Twice—in 1966 and again in 1978—, other attorneys have petitioned the State Supreme Court on Anastaplo’s behalf. But in both instances, the Court ruled that Anastaplo himself had to reapply. A detailed article in Chicago magazine this past winter [December 1982] sparked renewed interest in the Anastaplo affair. Ten Chicago attorneys have signed a petition to the Illinois Supreme Court, asking that the Court in essence reverse its decision of 1960 and invite Anastaplo to join the bar. But this time around, the Illinois State Bar Association has sent a similar petition to the Court.

Al Hofeld: We are not doing this for him alone. We are doing this also for the good of the legal profession. We want to be able to hold our heads members one appeared before. One member of the committee began by asking me whether I had an opinion as to whether members of the Communist Party were eligible to practice law. This was a question they asked other [applicants] also, I found out afterwards. Some members were asking this from time to time as a kind of test question. I responded to the effect that I saw no reason why membership in the Communist Party in itself should disqualify anyone from the practice of law. One committee member then said something to the effect, “Well, they believe in revolution.” I in turn said, “Everybody believes in revolution. Certainly, Americans believe in revolution.” That was very troublesome. We discussed that for a few minutes. I pointed to the Declaration of Independence and things like that. Then one of them said, “If you’re going to talk that way, you’re going to have to tell us whether you are a member of the Communist Party.” That is essentially what happened. I am paraphrasing everything. I said, “Do you think that is a proper question to ask anyone, whether he is a member of the Communist Party?” They said, “Yes, we’re investigating your character. If you don’t tell us, we can’t certify you.” This was in November 1950. That led thereafter to a hearing before the complete committee [of seventeen members] in January, which lasted several hours, but substantially on the same two issues, “What’s this talk about revolution?” and “What about your affiliations?”
high. When we do something wrong, or make a mistake, we want to admit it, and we want to rectify it and we want to go on.

Kotlowitz: Al Hofeld, the newly elected President of the Illinois State Bar Association, says that many of his colleagues (like the courts which have ruled in the past) insist that Anastaplo himself should reapply. Anastaplo, all along, has said that he will not chase the courts, that he will not, as one observer of the case put it, "go down on one knee."

Anastaplo: If only to keep men such as Mr. Stephan, who is himself a genial and in many ways pleasant and upstanding citizen—if only to keep such men repeatedly having to think about what they do, I believe this case is worth keeping alive.

Kotlowitz: Looking back, do you think Mr. Anastaplo should have answered the question?

Stephan: I think he should have, yes. I thought it turned into kind of a silly exercise in the end. We were jousting with each other and not dealing with the merits of the case.

Kotlowitz: Edmund A. Stephan is unapologetic about his vote twenty-five years ago to keep Anastaplo from becoming an attorney.

Kotlowitz: Why do you think he should have answered the question?

Stephan: Well, I think that we had a legitimate right to ask it.

Kotlowitz: Stephan goes on to say that, yes, Anastaplo should now be admitted to the bar, because he is convinced that Anastaplo does not belong to the Communist Party. Anastaplo, who now teaches in the adult liberal education program at the University of Chicago and at the Loyola University law school, admits that regardless of what the Court rules, he is not sure he wants to be admitted to the bar. Instead, he suggests, there is something to be said for remaining as a sobering and salutary symbol of the capriciousness of the McCarthy era.

Anastaplo: It is well to have reminders of how good men can go bad when the pressures become strong, when their interests are somehow challenged—and this is what the continuation of the case does. After all, if I had given in several years ago, and had reapplied and had been admitted to the bar (whatever good that would do for me now), I wouldn't be here talking to you.

Kotlowitz: That was George Anastaplo. For National Public Radio, I'm Alex Kotlowitz in Chicago.


Perhaps the most remarkable recent development in my somewhat controversial legal career, reported on in your September 11th article on the generous proposal on my behalf by the Illinois State Bar Association, is that
a law school as good as Loyola University's should have dared take me on as a teacher of jurisprudence and of constitutional law. This is a refreshing contrast to the simply disgraceful conduct in response to my Illinois bar admission troubles, for more than a quarter century now, by the University of Chicago Law School from which I graduated.

These strikingly different responses by law school faculties can be traced, in part, to the differences in temperament between two law school deans—Chicago's Edward H. Levi, who went on to become Attorney General of the United States, and Loyola's Charles W. Murdock, who is now Deputy Attorney General of the State of Illinois.

I do believe, as you report, that my exclusion from the bar should be left alone, serving thereby as a salutary reminder of what can go wrong when the bar, law schools and the judiciary do not conduct themselves as they should. One legacy of my case is the eloquent dissenting opinion in 1961 by Justice Hugo L. Black, a passage from which was read, at his request, at his funeral.

Whatever may now be said and done, a posthumous rehabilitation of me would probably be most instructive. Such rehabilitation could well include the establishment in my name at the University of Chicago Law School of an annual lecture, preferably to be delivered by a judge of stature, as a repeated reminder of how even "the best and the brightest" can give in to fear and ignorance.

My primary offense before the Committee on Character and Fitness three decades ago, it should not be forgotten, was that of defending the Declaration of Independence and its right of revolution. The significance of the right of revolution is pointed up by the efforts recently made by the Soviet government to justify to its own people the evidently deliberate destruction, in time of peace, of a trespassing passenger plane. Its significance is indicated as well by the fact that I was declared persona non grata by the government of the Greek Colonels in 1970 after I publicly asked their Prime Minister whether Greek army officers had the same right of revolution, on behalf of the common good, that he had presumed to exercise a few years before in seizing power.

My most recent comments on these and related matters may be found in my just-published book, *The Artist as Thinker: From Shakespeare to Joyce* (available from Ohio University Press).


The George Anastaplo of fame is a heroic man who, for the sake of principle, struggled unsuccessfully for eleven years to become a lawyer. He

26. The caption to the photograph accompanying this article reads, "George Anastaplo with
had been denied admission to the Illinois Bar during the McCarthy era for refusing to answer questions about whether he sympathized with Communists.

But today, Anastaplo, a small, kindly, grey-haired man of 58, sees little drama in his struggle. He suspects that he probably would not have remained a lawyer for long even if he had been admitted to the bar.

Anastaplo nevertheless unfolds a remarkable tale.

In 1950, after graduating at the top of his class at the University of Chicago Law School, Anastaplo went before the Illinois Supreme Court’s Committee on Character and Fitness to take a required oral exam. Although such examinations were mandatory for admission to the bar, there were no guidelines as to what questions should be asked. One man, Anastaplo recalls, was questioned as to why he, as a student, had let his wife support him.

At the height of the 1950s “Red Scare,” Anastaplo was asked “whether he had an opinion as to whether members of the Communist Party were eligible to practice law.”

Anastaplo’s natural response—that he didn’t see why not—prompted questions as to his Communist sympathies. Although he knew what he was expected to say, Anastaplo answered, “Do you think that is a proper question to ask?”

Anastaplo was not suspected of being a Communist, but the Committee refused to certify him because he refused to answer their questions.

Acting as his own lawyer, Anastaplo appealed his case to the Illinois Supreme Court, and later to the United States Supreme Court. Both upheld the Committee’s decision.

In 1961—still unsuccessful—Anastaplo wrote to the Illinois Supreme Court, expressing his desire to close the case, but offering his services to the court for “any further contribution I might honorably make to constitutional government and the rule of law.”

There have since been several attempts to reopen the case by Anastaplo’s friends, by the Committee on Character and Fitness itself and, just last July, by the Illinois Bar Association. But Anastaplo has refused to take part in the initiatives, saying, “There is much to be said for my continued exclusion from the bar—if only as a salutary reminder to the bar of how it can go wrong.”

Anastaplo—a Hyde Parker since 1947—praised the community for supporting him in the struggle. Many others—even at the University of Chicago where he was a scholar—did not, he said.

[a painting of] his patron saint, St. George the dragon-killer.” (The photograph is by C. G. Bloom.)

The final quotation in this Hyde Park Herald article from Helen Vlachou is from her column in her newspaper, Kathimerini (Athens, Greece), Nov. 10, 1983. See THE CONSTITUTIONALIST, supra note 1, at 680-81 n.18; HUMAN BEING AND CITIZEN, supra note 1, at 6-7, 224 n.1, 228 n.5. See also Appendix IX, Item A(i); supra note 87.
He received a Ph.D. from the Committee on Social Thought at the University of Chicago and now fights his battles in the mind and in the classroom. He is currently Lecturer in the Liberal Arts at the University of Chicago, Professor of Political Science and of Philosophy at Rosary College, and Professor of Law at Loyola University.

He is also the author of many articles and several books.

In his most recent book, *The Artist as Thinker* (Swallow Press/Ohio University Press), Anastaplo examines authors ranging from Shakespeare to Joyce, to see how an artist's concern for morals is reflected in his work.

His sense of morality still drives Anastaplo to be concerned with controversial issues. He believes one of the most serious threats facing society is the pervasive influence of the mass media, which has "led to a more passive community and a less informed electorate."

Although he feels that his struggle has had an effect upon his academic career—"I might have been teaching in better schools," he admits—Anastaplo doubts whether as a lawyer he could have been as outspoken on controversial issues. For airing his views, he has been expelled both from Russia and from Greece under a military dictatorship.

Although Anastaplo has been praised by many, he finds a description of him by Helen Vlachou, the most prominent Greek publisher today and an opponent of the former military dictatorship in her country, particularly appealing: "And then there is George Anastaplo, the American professor, who came to Athens to torment the colonels with his daring and his wit."

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**D. Letter from George Anastaplo to a member of the Rosary College faculty, January 22, 1984.**

I am distressed that you should be "appalled by the insensitivity of [my] remark in *The Hyde Park Herald* concerning ‘teaching in better schools’."

I take it that there are three questions here:

1) Did I say what I was quoted as saying?
2) If I did say it, was it true?
3) And even if true, should I have said something which implied that schools I have taught at were not the best?

I consider each of these questions in turn:

1) Did I say what I was quoted as saying? I was pressed, in the course of a quite long interview by a young reporter, to describe what deprivations, if any, had resulted from my bar admission controversy. I was pressed in this fashion because I had several times indicated in the course of the interview (as I have done on many other occasions), that in several ways things may have turned out better for me than they might have been if I had become a member of the bar—better both in the teaching and in the writing I have been able to do. When the interviewer persisted, I did concede that, but for my bar matter, I probably would have been teaching in different circumstances, that my academic career would have been better from the beginning. It was obvious, in the context, that “better” and “worse” were
being spoken of in the conventional sense. The tenor of this exchange is suggested by the very passage in the article you drew upon:

Although he feels that his struggle has had an effect upon his academic career—"I might have been teaching in better schools," he admits—Anastaplo doubts whether as a lawyer he could have been as outspoken on controversial issues.

Notice the use here of "he admits."

2) Was what I said true? Can there really be any doubt about that? Consider what the "beginning" was to which I referred when I allowed that my academic career would have been better from the beginning. There were more than a dozen years (from 1951 on) working for the Industrial Relations Center and for the Basic Program, both of them adult programs at the University of Chicago. The former required considerable travel all over the Midwest; the latter required several nights of teaching a week in the Chicago area. My Rosary College teaching, starting in the mid-1960s, followed upon these beginnings. Since the resources of both the College and the Basic Program were modest, I continued to serve in both institutions, which meant (among other things, in the late 1960s and into the 1970s) about twenty hours of teaching a week and a good deal of travelling. Can there be any doubt then that, but for my bar troubles, someone with my academic record, scholarly publications, and teaching reputation would have been on the regular faculty of one of the generally recognized great universities in this country? (Among the consequences of this would have been that I would have been paid far more than I was, and for only one or two courses a term. When I say this, I do not mean to suggest that these are the most important considerations, but they are not altogether unimportant either. Nor do I mean to suggest that either Rosary College or the Basic Program was in any position to pay me more—or that they paid me less than I was worth to them.) So much then for the question of whether what I said was true.

3) Nevertheless, should I have said what I did? What am I supposed to do when thus asked about my career? Am I to pretend that my bar controversy has been inconsequential—that there have been no disabilities or sacrifices because of it? Of course, I usually make much more of the good things that have happened to me, but my judgment would be suspect if I insisted that there have not been deprivations as well. Also, it would tend to make my career of resistance to the bar somewhat trivial or inconsequential. It is somehow appropriate that my offensive comment should have appeared in the very sentence in the article in which there was noticed the difficulty of being "outspoken on controversial issues."

A few other things should be noticed. I have many times spoken well of my experiences at Rosary College. Indeed, I know of no member of its faculty—certainly, I know of no lay faculty member—who has acknowledged as often as I have in print how much I have benefitted from my association with the College. (The very first appendix in my _Artist_ book is recent
testimony to this.) Nor, so far as I know, have I ever deliberately published an unkind or an untrue sentiment about the College.

It is because I am grateful for the benefits derived from my Rosary College career that I have indicated my willingness to continue my association with the institution as a "premature" Professor Emeritus, an association which would permit the College to enjoy whatever benefit might accrue to it from the publicity I do have thrust upon me from time to time because of my "past," my lectures and my publications.

Be all this as it may, I am sorry if this particular interview inadvertently left any mistaken impression about Rosary College. I am sorry also that you should have been as distressed about it as you evidently were.

APPENDIX XIII (1985)

Award to George Anastaplo by the Friends of Morris Library (signed by Anthony B. Venegoni, President, Friends of Morris Library, and by Kenneth G. Peterson, Dean, Library Affairs, Southern Illinois University, Carbondale, Illinois), April 21, 1985.

DELTA AWARD
 Presented to
 George Anastaplo
 For illuminating as teacher, author, and philosopher the issue of First Amendment rights
 Friends of Morris Library
 Southern Illinois University at Carbondale
 April 21, 1985