The Requirement of Specific Intent - A Further Limitation on Loyalty Oaths

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large sums as compensatory and punitive damages.[42] However, the decision appears to be correct when considered in the light of the record before the court.[43]

The primary importance of *Cudmore* lies in the fact that it is the first Texas case to expressly recognize foreseeability as a limiting factor in the application of the *Decker* rule. Although arguments may be made to the effect that foreseeability should not be an element of strict liability, most courts considering the problem have recognized it as a proper limitation upon the responsibility of the manufacturer.[44] Unfortunately the opinion does not provide discriminating elucidation on the factors of purity, abreaction, and unknowable risks.

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Over the past twenty years the Supreme Court has determined that loyalty oaths which condition public employment must be within the confines of certain limitations in order to be constitutional. Initially the court required that an oath expressly provide that the oath-taker have knowledge of any condemned association or activity (scienter), and later the Court added the requirement of objectivity, *i.e.*, the oath may be void for vagueness. Tearing a page from a history of precedent concerning criminal prosecutions for disloyalty, the Court has placed a third important limitation on loyalty oaths—the requirement that the oath-taker have a specific intent to further a proscribed organization's illegal aims. The propriety of incorporating principles which have developed from the review of criminal prosecutions into decisions concerned with conditions to public employment deserves analysis.

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[42] *See, e.g.*, Roginsky v. Richardson-Merrell, Inc., 254 F. Supp. 430 (S.D.N.Y. 1966) ($17,500 compensatory damages and $100,000 punitive damages). *But cf.* Lewis v. Baker & Richardson-Merrell, Inc., 413 P.2d 400 (Ore. 1966) in which the Oregon Supreme Court held that a properly tested drug marketed in accordance with federal regulations (apparently the fraud conviction was not admitted into evidence) is as a matter of law a reasonably safe product.

[43] It should be noted that the jury in *Cudmore* returned findings overwhelmingly in favor of the defendant to the effect that the manufacturer did not withhold information on MER-29; the drug was not unfit and unmerchantable; plaintiff's injuries were the result of an abreaction and that the state of medical knowledge was such that the injuries could not reasonably have been foreseen. The fraud conviction was not before the court, but the jury findings in *Cudmore* are inconsistent with fraudulent concealment. A finding that a product is unfit and unmerchantable would seem to be a necessary part of plaintiff's case and under authorities cited by the court either of the findings on abreaction or unknowable risk would be a complete defense. In spite of these findings the plaintiff filed neither a motion to disregard any of the findings nor a motion n.o.v. The plaintiff complained of the definitions submitted in conjunction with the special issues relating to merchantability and abreaction, but did not challenge the unknowable risk finding on any ground. The plaintiff contended on appeal that neither allergy, idiosyncrasy nor abreaction was a proper defense in an implied warranty case, but the argument was not embraced in a point of error or in an assignment in the motion for new trial. 398 S.W.2d at 645.

[44] *See* cases cited notes 31, 32 *supra*.

I. The Loyalty Oath in Perspective

Loyalty oaths have long been used as a means of assuring loyalty and fidelity to states in times of crisis and to afford strength to governments. Oaths have been required of federal and state employees as well as employees of private firms and institutions in order to protect the state or employer from undesirable elements that might infiltrate and weaken the state or organization. History testifies to the extensive use of oaths as a means of gaining this assurance.[1] During the Revolutionary War, the Civil War period, and, more recently, the McCarthy investigations, oaths have been particularly prevalent in the United States. Loyalty oaths have been subject to constant attack throughout this long period. One of the earliest objections to the loyalty oath was that it is a bill of attainder,[2] *i.e.*, exclusion from employment for failure to take a loyalty oath amounts to legislative punishment without trial. Although some loyalty oaths have been classified as bills of attainder,[3] the Supreme Court generally rejects this contention by ruling that the oath provides a reasonable standard of qualification and eligibility for employment which does not inflict punishment of a criminal nature and is therefore constitutional.[4] For the same reason, the Court has rejected contentions that loyalty oaths are ex post facto laws[5] because they purport to impose a punishment for an act not punishable at the time it was committed.[6]

The principal attack made against loyalty oaths has been that they restrict the first amendment rights of freedom of speech, belief, and association.[7] Critics have contended that, because numerous statements, beliefs, and associations can be considered disloyal, the requirement of taking a loyalty oath overly restricts the individual with the result that he is

[1] The loyalty oath was used against the Hugenots in France and as a method of locating "heretics" during the Spanish Inquisition. Also, the oath enabled English rulers to outlaw certain groups considered dangerous for political as well as religious reasons, namely Catholics, Quakers, Baptists, and Congregationalists. In the United States concern with the problem of loyalty appeared during the Revolutionary and Civil Wars. A loyalty test was established by Congress in 1778 to be administered to all civil and military officers for the purpose of preventing the employment of persons with an interest adverse to the United States. During the Civil War and its aftermath loyalty oaths were in abundance, *e.g.*, Missouri adopted a new constitution in 1865 which contained the requirement that those wishing to teach, vote, or hold office must subscribe to an oath of past loyalty to the United States. Congress later enacted a similar loyalty statute for persons wishing to practice law before the federal courts. Loyalty oaths were not in abundance during the Red scare of the 1920's, but they did reappear during the post-World War II period and reached a peak during the period of the McCarthy investigations.

[2] "No state shall . . . pass any Bill of Attainder." U.S. Const. art. I, § 10. For a discussion of the bill of attainder see Brown v. United States, 318 U.S. 437 (1964).

[3] *Ex parte* Garland 71 U.S. (4 Wall.) 333 (1867); Cummings v. Missouri, 71 U.S. (4 Wall.) 277 (1867).

[4] Garner v. Board of Pub. Works, 341 U.S. 716 (1951); American Communications Ass'n v. Douds, 339 U.S. 382 (1950).

[5] U.S. Const. art. I, § 10 provides: "No state shall . . . pass any Ex Post Facto Laws."

[6] Garner v. Board of Pub. Works, 341 U.S. 716 (1951); American Communications Ass'n v. Douds, 339 U.S. 382 (1950); *Ex parte* Garland, 71 U.S. (4 Wall.) 333 (1867); Cummings v. Missouri, 71 U.S. (4 Wall.) 277 (1867). For a further discussion of traditional attacks on loyalty oaths see Comment, *Loyalty Oaths, Conscience and the Constitution*, 5 Ariz. L. Rev. 254, 256 (1964).

[7] Wieman v. Updegraff, 344 U.S. 183 (1952). *See also* Comment, *supra* note 6, at 257. Freedom of association is a peripheral freedom to the basic first amendment right of freedom of speech. *See also* Adler v. Board of Educ., 342 U.S. 485, 508 (1952) (Douglas, J., dissenting opinion).

unsure of what he can say or believe and with whom he can associate.[8] Although conceding that loyalty oaths limit first amendment freedoms, and despite the express language of the first amendment that Congress shall make no law abridging the freedom of speech, press, or assembly, the Supreme Court has held that the freedoms are not absolute.[9] Instead they are dependent on the power of constitutional government to survive and therefore governments may protect themselves from internal weakening by requiring their employees to take a loyalty oath as a condition of employment. When confronted with the constitutionality of a loyalty oath the Court has attempted to balance the government's interest against the individual's interest, and only if the government can show a substantial need of self-protection will the courts concede it the power to protect itself against unlawful activity in government.[10]

The balancing of interest test was applied when the constitutionality of loyalty oaths was challenged in *Gerende v. Board of Supervisors*[11] and *Garner v. Board of Public Works*.[12] In *Gerende* the Supreme Court held constitutional a Maryland oath which provided that a candidate for public office must swear that he is not engaged "in one way or another in the attempt to overthrow the government by force and violence and that he is not knowingly a member of an organization engaged in such an attempt."[13] In *Garner* the Court upheld the right of a municipal employer to prescribe loyalty oaths for its employees and ruled that a city, state, or nation had a substantial interest in assuring itself of fidelity to the government on the part of those who seek to serve it. The oath in *Garner* also provided that the public employee shall not be engaged in any attempt to overthrow the government and that he foreswear membership in proscribed organizations. The Court distinguished reasonable legislative definitions of standards for employment from legislative infliction of punishment.

II. Scienter and Objectivity: Two Limitations on Loyalty Oaths

Recent Supreme Court decisions, dealing with more sophisticated attacks, set out certain limitations to which loyalty oaths are subject according to the first, fifth, and fourteenth amendments. In *Wieman v. Updegraff*[14] the Court held that a state loyalty oath must require the element of scienter, or actual knowledge of the forbidden purposes of the proscribed organization.[15] A second limitation on loyalty oaths was set forth

[8] For a discussion of the restrictions imposed by loyalty oaths see Z. Chafee, The Blessings of Liberty (1956).

[9] Wieman v. Updegraff, 344 U.S. 183 (1952); American Communications Ass'n v. Douds, 339 U.S. 382 (1950).

[10] Wieman v. Updegraff, 344 U.S. 183, 188 (1952).

[11] 341 U.S. 56 (1951). *See also* 37 A.B.A.J. 604 (1951).

[12] 341 U.S. 716 (1951); 38 A.B.A.J. 61 (1952); 50 Mich. L. Rev. 467 (1952). *See also* Adler v. Board of Educ., 342 U.S. 485 (1952).

[13] 341 U.S. 56 (1951).

[14] 344 U.S. 183 (1952).

[15] For a discussion of the *Wieman* case see 39 Cornell L.Q. 118 (1953); 51 Mich. L. Rev. 1076 (1953); 28 Notre Dame Lawyer 406 (1953).

in the case of *Baggett v. Bullitt*[16] where the void for vagueness doctrine[17] was applied. In *Baggett,* sixty-four members of the faculty, staff, and student body of the University of Washington brought a class action for a declaratory judgment on the constitutionality of a Washington oath of allegiance. The Supreme Court held that the Washington oath[18] was lacking in "terms susceptible of objective measurement," because the portion of the oath concerned with the definition of a "subversive person" was vague.[19] The oath was invalidated due to the wide scope of its possible application.[20] The Court reasoned that loyalty oaths must be clear and objective in order that the party involved may understand exactly to what he was swearing.[21]

III. The Development of the Specific Intent Concept

Specific intent, the limitation of contemporary significance to the Court, requires that not only must a person possess knowledge of the illegal aims of the organization which is prohibited, but that also he must have the specific intent to further these illegal aims. This makes active members of the proscribed organization the target; not passive members who know of, but do nothing to aid or further, the organization's illegal goals.

Analogies can be drawn from other areas where the concept of specific intent has been considered in order to illustrate the development and application of the concept to oaths which condition public employment. The Smith Act cases[22] were concerned with criminal prosecutions under the membership clause of the Smith Act.[23] In *Scales v. United States*[24] the Court upheld the membership clause of the Smith Act because the statute allowed the federal government to prosecute only those active members who had the specific intent to carry out the unlawful aims of the organization, securing the government's destruction. Thus, the Court held that Congress could make "active" membership in the Communist party a crime.[25] This decision was in accord with the Supreme Court's holding in *Dennis v. United States*[26] which involved a criminal prosecution under the Smith Act for advocating the overthrow of the government. In *Dennis*

[16] 377 U.S. 360 (1963).

[17] *See* 26 Ohio St. L.J. 128 (1965) for a further discussion of the void-for-vagueness doctrine. *See also* Note, *Vagueness, The Crippler of Loyalty Oaths,* 25 Md. L. Rev. 64 (1965).

[18] Wash. Rev. Code § 9.81.070 (1961).

[19] "Subversive person means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow . . . the government . . . of the United States, or of the State of Washington." Wash. Rev. Code § 9.81.010(5) (1961).

[20] 377 U.S. at 361-72.

[21] For further discussions of *Baggett v. Bullitt* see Note, *Loyalty Oaths in Pennsylvania Since Baggett v. Bullitt,* 26 U. Pitt. L. Rev. 621 (1965); 50 A.B.A.J. 1170 (1964).

[22] Noto v. United States, 367 U.S. 790 (1961); Scales v. United States, 367 U.S. 203 (1961).

[23] 18 U.S.C. § 2385 (1958): "Whoever organizes or helps or attempts to organize any society, group or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of or affiliates with any such society, group, or assembly of persons, knowing the purpose thereof." The relevant paragraph of the act makes a violation punishable by fines up to $20,000 and imprisonment up to 20 years.

[24] 367 U.S. 494 (1951).

[25] 47 A.B.A.J. 1210 (1961); 15 Vand. L. Rev. 280 (1961).

[26] 341 U.S. 494 (1951).

the Court read the element of specific intent, deemed necessary for a constitutional conviction, into the advocacy and organization clauses of the Act.

In addition to the above-mentioned criminal prosecutions under the Smith Act, *Aptheker v. Secretary of State*[27] invalidated a civil statute which declared that no member of a Communist organization ordered by the Subversive Activities Control Board to register would be allowed to apply for or use a passport. The Court based its decision on Congress' failure to require that the member have the specific intent to carry out the illegal aims of the Communist party. The Court has required the element of specific intent to avoid too broad an application of the statutes—its inclusion provides a narrow interpretation which favors personal liberties.

IV. ELFBRANDT AND KEYISHIAN

In *Elfbrandt v. Russell*[28] a teacher, unsure of the meaning of an Arizona loyalty oath[29] decided she could not in good conscience take the oath and filed suit for declaratory relief. The oath was sustained by the Arizona Supreme Court[30] and the United States Supreme Court granted certiorari. The Court held that unless a loyalty oath applies only to members who have specific intent to further the illegal aims of proscribed organizations, as compared to mere passive, knowing members, the oath violates the freedom of association guaranteed by the first and fourteenth amendments.[31]

[27] 378 U.S. 500 (1963). *See* Note, *Constitutional Law—Aptheker v. Secretary of State—Freedom of Movement and a New Approach to the Constitutionality of Statutes,* 19 Sw. L.J. 138 (1965).

[28] 384 U.S. 11 (1966).

[29] ARIZ. REV. STAT. ANN. § 38-231 (Supp. 1965). Section E in its entirety reads as follows:

> Any officer or employee as defined in this section having taken the form of oath or affirmation prescribed by this section, and knowingly or wilfully at the time of subscribing the oath or affirmation, or at any time thereafter during his term of office or employment, does commit or aid in the commission of any act to overthrow by force or violence the government of this state or of any of its political subdivisions, or advocates the overthrow by force or violence of the government of this state or of any of its political subdivisions, or during such term of office or employment knowingly and wilfully becomes or remains a member of the Communist party of the United States or its successors or any of its subordinate organizations or any other organization having for one of its purposes the overthrow by force or violence of the government of the state of Arizona or any of its political subdivisions, and said officer or employee as defined in this section prior to becoming or remaining a member of such organization or organizations had knowledge of said unlawful purpose of said organization or organizations, shall be guilty of a felony and upon conviction under this section, shall be subject to all the penalties for perjury. In addition, upon conviction the officer or employee shall be deemed discharged from said office or employment and shall not be entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to said office or employment.

[30] 381 P.2d 554 (Ariz. 1963). This judgment was later vacated by the United States Supreme Court and the cause was remanded for reconsideration. 378 U.S. 127 (1964). On reconsideration the Arizona Supreme Court reinstated its original judgment. 397 P.2d 944 (Ariz. 1964).

[31] "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, . . ." U.S. CONST. amend. I; "[N]or shall any State deprive any person of life, liberty, or property without due process of law; . . ." U.S. CONST. amend. XIV, § 1. The Supreme Court has developed freedom of association as a derivative of the right of free speech, assembly, press, and religion. *See* Bates v. Little Rock, 361 U.S. 528 (1959); NAACP v. Alabama, 357 U.S. 449 (1957). For authority that freedom of association is among the liberties protected by the due process clause, see Staub v. City of Baxley, 355 U.S. 313, 321 (1958); Cantwell v. Connecticut, 310 U.S. 296, 303 (1940); Palko v. Connecticut, 302 U.S. 319, 324 (1937); Gitlow v. New York, 268 U.S. 652, 666 (1925).

Since the Arizona oath did not require specific intent, it was struck down by the Court.

According to the Arizona Supreme Court the loyalty oath attacked in *Elfbrandt* met the requirements set down in earlier Supreme Court decisions. The oath did not suffer from vagueness as did the Washington oath considered in *Baggett* nor did it lack the scienter requirement set out in *Wieman*. Still, the Court was not satisfied and demanded inclusion of the element of specific intent because without this safeguard a person could be subjected to a prosecution for perjury and dismissed from office merely because he associated with a proscribed organization, without carrying out the illegal aims of the organization. According to the Court, only when an individual actively participates in the organization's illegal activities and has the specific intent to bring about the organization's illegal goals is he a sufficient threat to justify his dismissal or prosecution pursuant to the terms of a loyalty oath statute.[32] The Court felt that an oath such as Arizona's infringed upon an individual's first amendment rights because, if applied, it would make a party guilty by association.[33] The Court did not feel that the unconstitutional goals could be attributed to one who merely belonged to the organization—there must be more, namely, specific intent and active participation. The interest in protecting an individual from this stigma outweighed the governmental interest of protecting itself from internal weakening[34] because the Court felt the state could not show that a mere passive, knowing member was a sufficient threat to undermine the strength of the government.[35]

The failure of the Court to mention *Garner, Gerende,* or *Wieman*[36] seemed to indicate that the Court might have been displeased with some particular aspect of the Arizona oath, *e.g.*, the fact that a person who violated the statute could be prosecuted for a felony. But, whatever doubt might have existed as to whether specific intent was required in the absence of a criminal prosecution clause was erased by the Court in the recently decided case of *Keyishian v. Board of Regents.*[37] In *Keyishian* members of the faculty of the State University of New York brought an

[32] Mr. Justice Douglas, in his opinion, states:

> Those who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees. Laws such as this which are not restricted in scope to those who join with the 'specific intent' to further illegal action impose, in effect, a conclusive presumption that the member shares the unlawful aims of the organization.

384 U.S. at 17.

[33] *Id.* at 18.

[34] Mr. Justice Douglas later stated:

> A statute touching those protected rights must be narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state. . . . Legitimate legislative goals cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. . . . A law which applies to membership without 'specific intent' to further the illegal aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of 'guilt by association' which has no place here.

384 U.S. at 18.

[35] See note 32 *supra.*

[36] See text accompanying notes 15-17 *supra.*

[37] 385 U.S. 589 (1967).

action for declaratory and injunctive relief, alleging that the loyalty oath required of state employees of New York violated the Federal Constitution. The majority ruled that New York statutes making Communist party membership a disqualification for teaching in public school were unconstitutionally broad due to the fact that they sanctioned mere knowing membership without any showing of specific intent to further the unlawful aims of the Communist party. The Court stated that statutes which conditioned public employment without requiring specific intent, regardless of the presence of a criminal prosecution clause, suffered from "impermissible overbreadth," and thus restricted the freedom of association guaranteed by the first amendment.[38] Mr. Justice Clark was joined by three other Justices in a strong dissent[39] which urged the right to disqualify from public employment any person joining an organization dedicated to the overthrow of the government, whether he be an active or a passive member.[40]

An important distinction to be drawn from the Court's rulings in *Elfbrandt* and *Keyishian* is that between the law as to the illegal versus the legal aims of the party. The doctrine established by the Court applies to a member's specific intent and action to further the illegal aims of the organization. It appears from the Court's decision that if a Communist party member is actively engaged in what the Court might consider a legal aim of the party, *e.g.*, attending a meeting conducted for the purpose of encouraging admission of Communist China into the United Nations, then, although he has specific intent to further this goal and is an active participant, he is still protected by the first and fourteenth amendments. Only when he actively engages in activity designed to secure the illegal aims of the party will he be outside this protection.

V. Conclusion

It can be contended that the state should have the power to condition public employment on abstention from Communist party membership—active or passive. A passive member with no specific intent to further the Communist party's aims may at first glance pose no threat, but there are certain disadvantages to placing passive members outside of the rule. By belonging to the party the passive member is lending his name in support of an organization which could influence others to sympathize with, join, or even actively participate in, the organization. The possibility exists that passive members could secure public employment with the opportunity for future harmful conduct. The specific intent requirement interjects difficult problems of proof into the matter as well. In many instances a

[38] *Id.* at 609.

[39] *Id.* at 620.

[40] The Court also held N.Y. Educ. Law § 3021 (McKinney 1953) and N.Y. Civ. Serv. Law §§ 105(1)(a), (1)(b) and (3) (McKinney 1953) unconstitutional. These sections required the removal of teachers for "treasonable or seditious" utterances or acts. In accord with the Baggett v. Bullitt, 377 U.S. 360 (1964), doctrine the Court struck these provisions down as being void-for-vagueness. 385 U.S. 589 (1967). This case overruled the earlier Supreme Court ruling in Adler v. Board of Education, 342 U.S. 485 (1952), wherein the Feinberg Law § 3022 (McKinney 1953) was held to be constitutional as a reasonable means of setting employment standards.

party member may appear passive and be free of prosecution when actually having actively participated. The requirement will demand more detailed inquiry into what a supposedly passive party member has done in the past. The narrow application which the Court requires in framing a loyalty oath produces "opportunities to nullify the purposes of the legislation with ease."[41]

In applying the specific intent concept, it is important to note the difference in sanctions involved for a violation of a statute. Where a severe criminal prosecution is involved, such as in the Smith Act cases, it is more reasonable to have a specific intent requirement and assure the individual of his personal liberties. On the other hand, in the loyalty oath area where the subject matter is state employment and the sanction is usually disqualification, it is not necessary to construe the statute so strictly. Although an individual's liberties may be restricted somewhat, the balance of the interests would seem to indicate that the state should be allowed to exclude active and passive Communist party members from public employment.

It is very likely that loyalty oath decisions are subject to the tenor of the particular period they are in. In a time of internal Communist threat and public apprehension, the Court is more likely to favor the oaths, whereas, during a period of complacency or confidence toward the internal Communist movement, the loyalty oath is more likely to be narrowly construed.[42] Regardless of the mood of the nation, the government's interest should be protected where there is adequate reason for doing so. The inclusion of passive members of the Communist party would not seem to be such an intrusion on the first amendment rights as to outweigh the governmental interest of self-protection.[43] *George E. Seay, Jr.*

[41] Winters v. New York, 333 U.S. 507 (1948). *See also* Justice White's dissenting opinion in Elfbrandt v. Russell, 384 U.S. 11, 20 (1966).

[42] Certainly state oaths such as Texas' which do not have the requirement of specific intent are subject to being struck down. *See* TEX. REV. CIV. STAT. ANN. art. 6252-7 (1962).

[43] In the recent case of Whitehill v. Elkins, 258 F. Supp. 589 (D. Md. 1966), a District Court of Maryland case, the loyalty oath required by Maryland's Subversive Activities Act of 1949, MD. ANN. CODE art. 85A (1964) was attacked by a visiting lecturer at the state university. The oath stated that the applicant is "not engaged in one way or another in the attempt to overthrow the Government of the United States, or the State of Maryland, or any political subdivision of either of them by force or violence." Another portion of this oath which stated that the applicant is not a member of a subversive organization was deleted by the Attorney General of Maryland due to the *Elfbrandt* decision requiring specific intent. Since this portion was not included in the applicant's oath, the district court ruled that the oath was not so vague as to deprive the plaintiff of due process or equal protection of the laws. At the United States Supreme Court's session of February 13, 1967, review was granted of *Whitehill v. Elkins* in order to allow the Court to consider whether the oath is void-for-vagueness, a bill of attainder, and if it infringes on the first and fourteenth amendment rights of freedom of expression, association, and belief.

It appears from the language of the oath required of the applicant that it should be held constitutional due to the references to overthrow by force and violence. This clearly defines specific intent and activity as required by *Elfbrandt* and *Keyishian*. Just what purpose the Supreme Court has in reviewing this decision is difficult to ascertain. One possible reason for the Court's decision to review the *Whitehill* case is that this is the same oath that was held constitutional by the Supreme Court in *Gerende v. Board of Supervisors* decided in 1950. In the *Keyishian* case the court reviewed the New York Feinberg law which was held constitutional in *Adler v. Board of Educ.* in 1952. The *Keyishian* case set the Feinberg Law in line with the current Supreme Court rulings on loyalty oaths. In reviewing *Whitehill* the Court would essentially be doing the same thing although it does not appear from the remaining portion of the Maryland oath that the District Court of Maryland's decision will be overruled. This portion of the oath is in line with the *Baggett, Elfbrandt,* and *Keyishian* doctrines and should stand.