

A CHALLENGE TO THE LOYALTY OATH

A court test for the loyalty oath may send state legislators back to the drawing board

Oklahoma's loyalty oath, which is a requirement for employment by the state, will be contested in the courts. Vincent Maefsky, a graduate assistant in philosophy who was refused payment and dismissed from his OU job and fellowship when he refused to sign the oath, plans to test its constitutionality.

The present oath is the state's second. The first oath passed by the legislature was declared unconstitutional in 1951 by the U.S. Supreme Court (*Wieman v. Updegraff*).

Said Maefsky when he was notified of the University's action, "I was hop-

ing the issue wouldn't be pressed. My primary purpose in coming here is to study philosophy. I am not a communist, but I feel whether I am or not is irrelevant and that the oath is unconstitutional."

Maefsky is not alone in his questioning of the oath. The U.S. Supreme Court has in recent years thrown out all of those brought before it for various reasons. An article by Stanton B. Pemberton in the Fall 1967 *Baylor Law Review* points to four concepts which appear to him to be the principal tools used by the high court in such loyalty oath cases. The one

which applies to Oklahoma's loyalty oath is:

"4. Such an oath cannot have *overbreadth* to the extent of infringing First Amendment freedoms by depriving them of adequate breathing space. A state or the federal government may regulate in this area only with narrow specificity. Therefore, an oath provision required as a condition of public employment may not indiscriminately group for penal purposes mere knowing membership with knowing active membership with specific intent to further the illegal aims of an organization."

It is on this concept that Oklahoma's oath appears most vulnerable. The 1966 Court decision which ruled that Arizona's loyalty oath was unconstitutional indicates that the same fate awaits Oklahoma's, for the two states' oaths are quite similar.

The testing process in the courts likely will require a long time, up to two years and possibly more. Maefsky has been approached by both the American Association of University Professors and the American Civil Liberties Union about assistance.

In the August issue of the *Oklahoma Law Review* Philip F. Horning, article and book review editor, wrote an article in which he examined Oklahoma's oath in an attempt to ascertain its ability to meet constitutionality as indicated by recent Supreme Court decisions, particularly the Arizona ruling. His article follows.

OKLAHOMA'S LOYALTY OATH

I, _____, do solemnly swear (or affirm) that, consistent with my citizenship, I will support, obey and defend the Constitution of the United States and the Constitution of the State of Oklahoma, will not violate any of the provisions thereof, and will discharge the duties of my office or employment with fidelity.

I do further swear (or affirm) that I do not advocate by the medium of teaching, or justify, directly or indirectly, and am not a member of or affiliated with the Communist Party or the Cominform or with any party or organization, political or otherwise, known to me to advocate by the medium of teaching, or justify, directly or indirectly, revolution, sedition, treason or a program of sabotage, or the overthrow of the government of the United States or of the State of Oklahoma, or a change in the form of government thereof by force, violence or other unlawful means.

I do further swear (or affirm) that I will take up arms or render non-combatant service in the defense of the United States in time of war or national emergency, that is, if by valid law required.

I do further swear (or affirm) that during such time as I am _____ (explanation of association with the University) I will not advocate by the medium of teaching or justify, directly or indirectly, and will not become a member of or affiliated with the Communist Party or with any party or organization, political or otherwise, known to me to advocate through the medium of teaching, or justify, directly or indirectly, revolution, sedition, treason or a program of sabotage, or the overthrow of the government of the United States or of the State of Oklahoma, or a change in the form of government thereof by force, violence or other unlawful means.

Another Unconstitutional Loyalty Oath?

By Philip Horning

The recent United States Supreme Court decision in *Elfbrandt v. Russell*, which holds unconstitutional an Arizona statutory loyalty oath, casts grave doubt on the validity of the present Oklahoma statutory loyalty oath. In this case, which promises to be a landmark decision in the loyalty oath field, an Arizona school teacher sought a declaration of invalidity of a statutory loyalty oath which state employees were required to sign. Subsection E of the same statute made any employee who signed the oath and knowingly became or remained a member of any organization having as "one of its purposes" the overthrow of the government of Arizona subject to prosecu-

tion for a felony and to discharge from employment. The Court held that the oath and subsection E infringed upon freedom of association, as protected by the First Amendment, because nothing in the oath, subsection E, or the construction given to both by the Arizona Supreme Court excluded membership by one who had knowledge of, but did not subscribe to the unlawful ends of such an organization. The Court stated that such a law rested on "guilt by association" and subjected the employee to the "hazard of being prosecuted for knowing but guiltless behavior."

An examination of the Oklahoma loyalty oath and accompanying subsection 6 reveals that they are open to the