

**Character and
Fitness Teach-In
2/27/21
1-3PM EST**



Program

History/ Structure of C&F Process

Legal Violations Of Question 26

Stories By Impacted Individuals

Goal & Common Concerns

Advocacy Areas

How To Get Involved

Q&A and Thoughts

Close Out

- New York campaign and coalition; started during Uprising 2020
- System-impacted and allied law students, lawyers, partner organizations
- Challenge barriers to legal profession, investigate profession as a whole
- Footsteps of others: Deborah Rhode; Caroline Cohn, Debbie Mukamal, Robert Weisberg Stanford Report; Shon Hopwood; Tarra Simmons; Lindsey Lusk; St. John's Labor Relations & Employment Law Society; United4DiplomaPrivilege



Unlock the Bar (UTB)

What is the Character and Fitness (C&F)?

- Process of gaining admission to State Bar (licensure) to practice law
- Assessment of “character” “morality” “ethics”
- Interviewed by a C&F Committee
- Extensive and Invasive
- Law school admission applications copy questions from C&F app
- A C&F process is mandated by State law

What is the Character and Fitness (C&F)?

- Whose morality are we considering?
- Circumstances do NOT equal character
- Past actions do NOT equal future harm
- Character is not a static entity

“[M]any studies have concluded that situational factors have a greater impact than character traits in determining how people respond to a particular situation.”

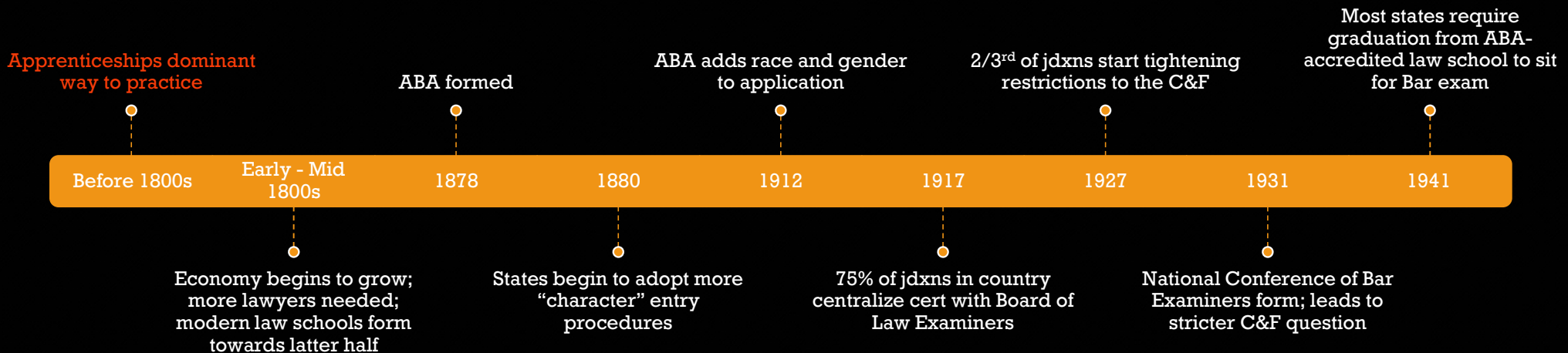
- Lerman, *Ethical Problems in the Practice of Law*

History of Character and Fitness

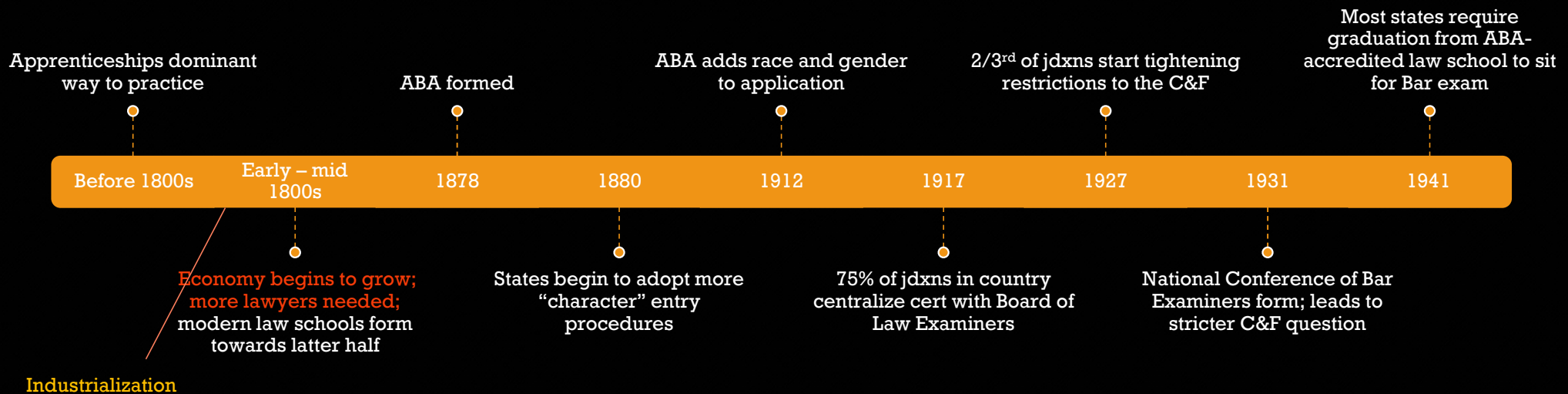
History of C&F (hint: Racist)

- C&F based on racist, anti-immigrant, anti-Semitic, capitalist exclusion
- Political exclusionary tool
- Exclusion historically pushed by structures we see today: Law Schools, Bar Associations, Conference of Law Examiners
- Story of C&F is story about legal profession

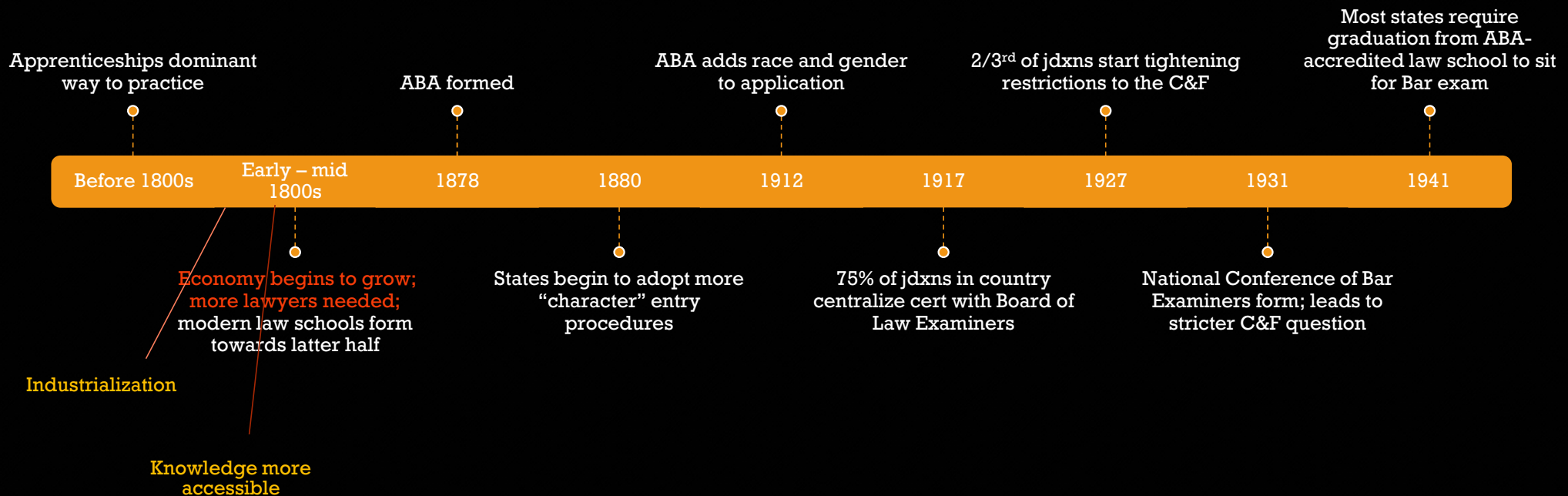
History of C&F (hint: Racist)



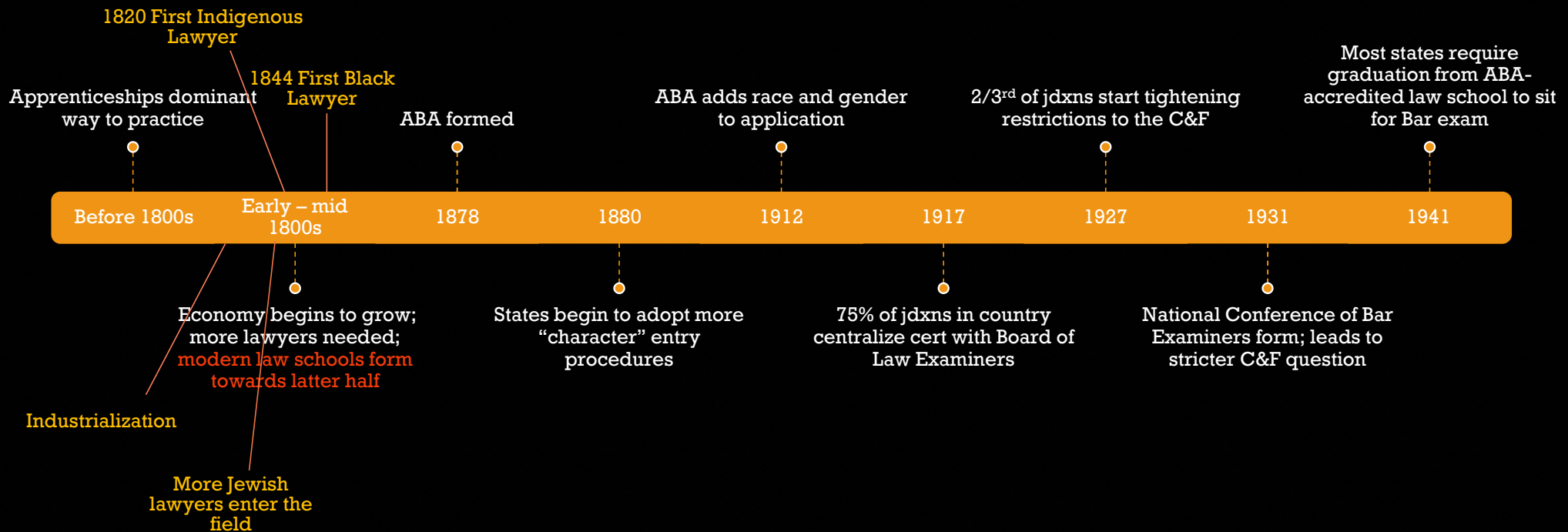
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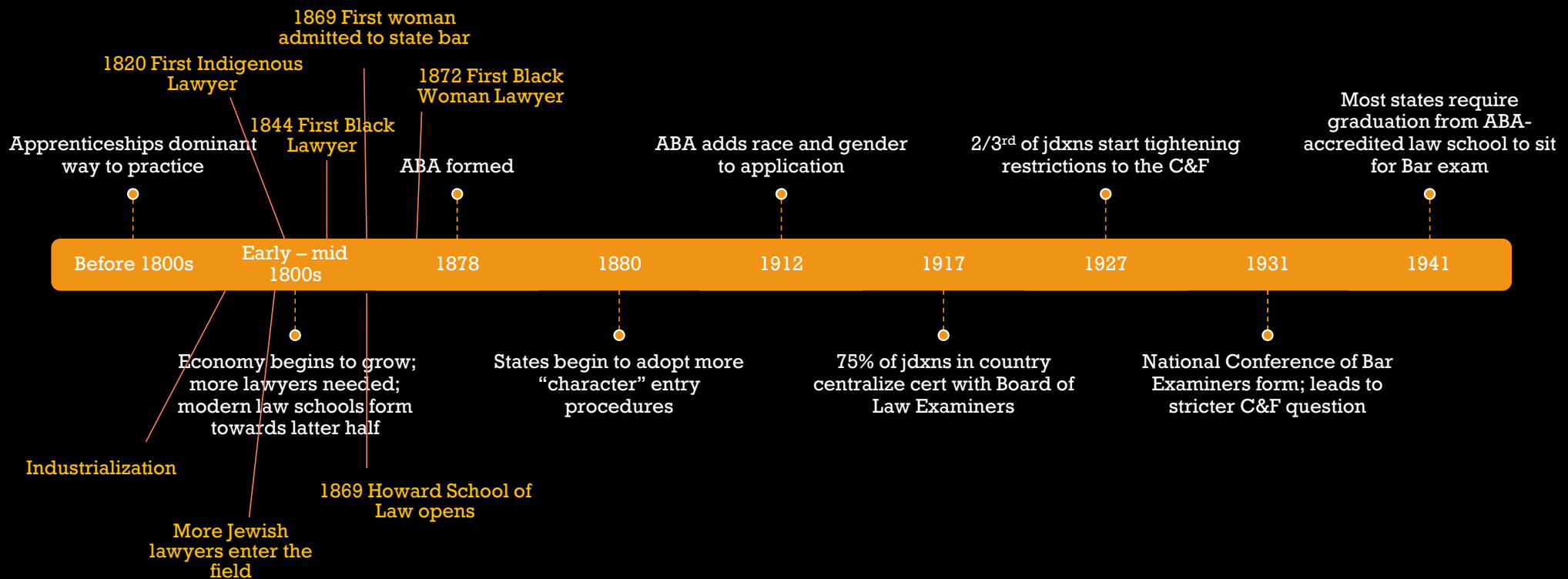
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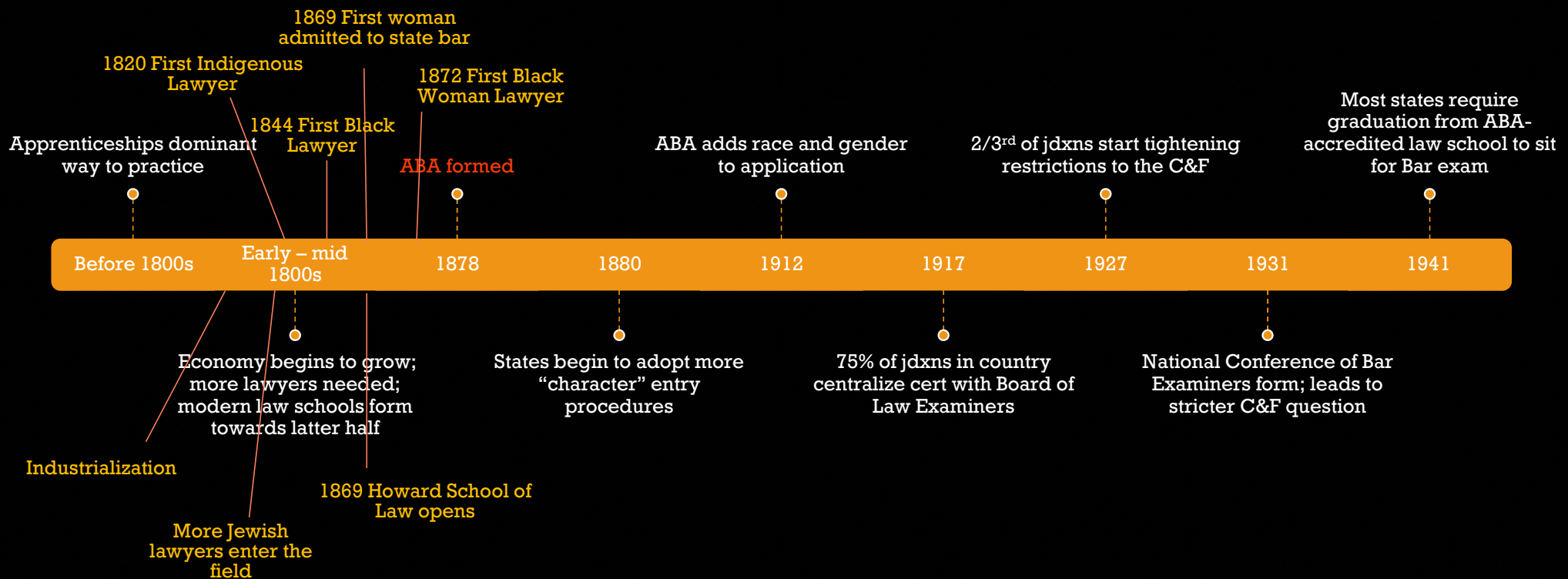
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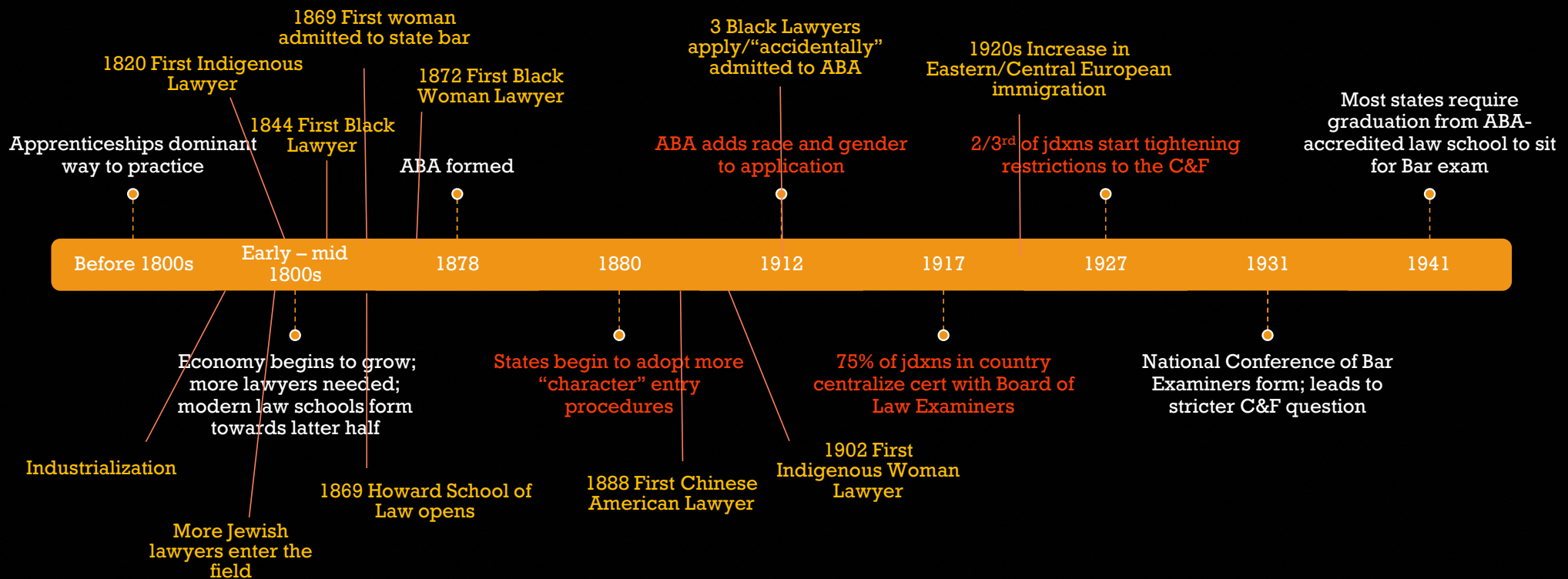
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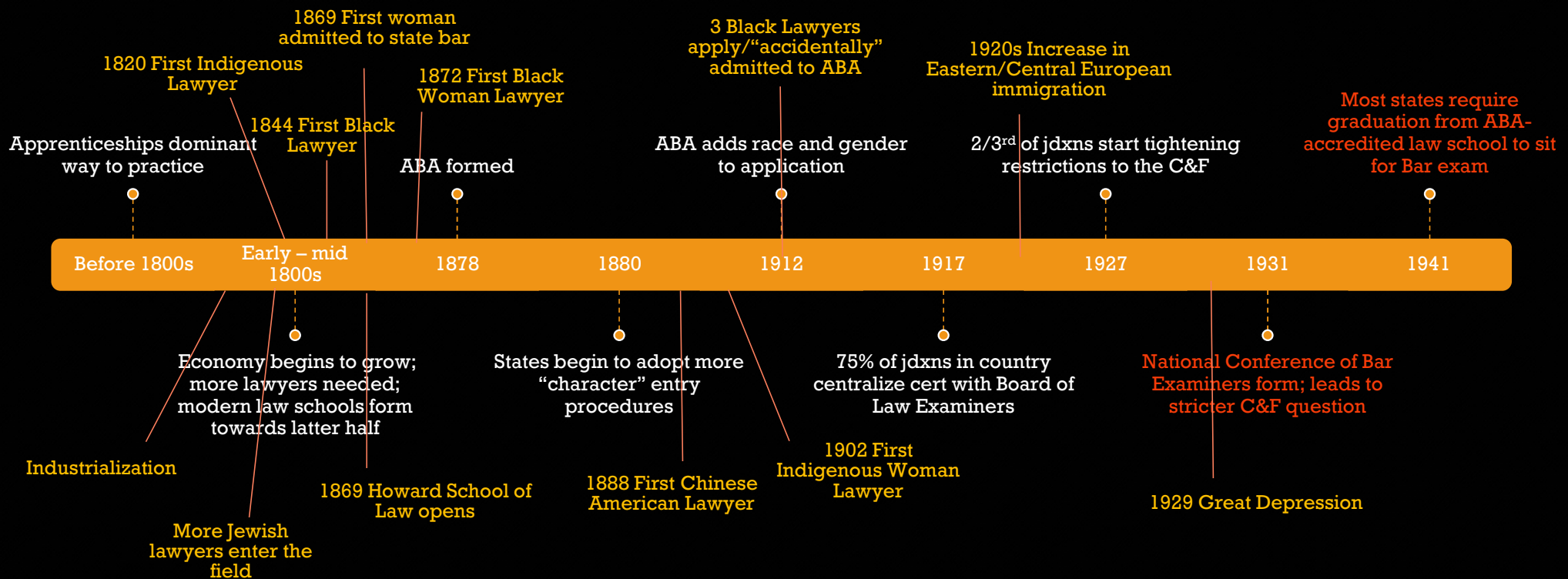
History of C&F (hint: Racist)



History of C&F (hint: Racist)



History of C&F (hint: Racist)



History of C&F

“The professional elite were quite open about their desire to exclude Jewish and Catholic Eastern and Southern European immigrants and their sons, whose entry into the profession had been greatly facilitated by the shift from apprenticeship to academic training. The introduction of prelegal educational requirements, the attack on unapproved and part-time law schools, the requirement of citizenship, and the introduction of “character” tests were all directed toward this end, in whole or part.”

- Professor Richard Abel in *Ethical Problems in the Practice of Law*

History of C&F

- Exclusion has been an economic and political tool

“Among those raising doubts were non-conformists of various hues: radicals, religious fanatics, divorcees, fornicators, and any individual who challenged the profession's anticompetitive ethical canons”

- Professor Deborah Rhode, *Moral Character as a Professional Credential*
 - (Great Depression Era)

History of C&F

- Rudolph Schware - Jewish Bar applicant excluded from New Mexico Bar during height of McCarthyism

“It is moved by Board Member Frank Andrews that the application of Rudolph Schware to take the bar examination be denied for the reason that, taking into consideration the use of aliases by the applicant, his former connection with subversive organizations, and his record of arrests, he has failed to satisfy the Board as to the requisite moral character for admission to the Bar of New Mexico”

- C&F Committee Hearing Minutes. *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957).

History of C&F

Of professional licensure requirements: “[I]n some states virtually the only ‘profession’ open to [a formerly incarcerated person] is that of burglar; [they’re] barred from other activities because [they’re] presumed to be a person of bad moral character.”

- Professor Walter Gellhorn, *The Abuse of Occupational Licensing*

Overview of Character and Fitness Structure

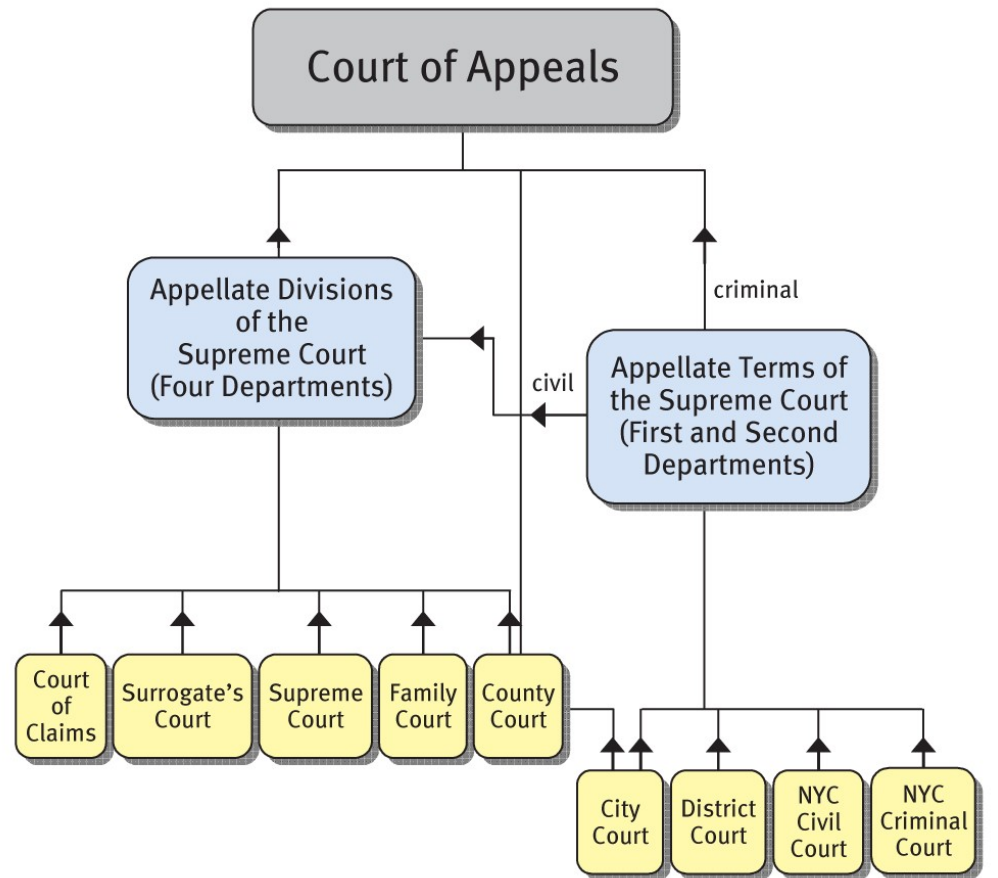
Overview of the C&F

- What laws authorize the C&F in NY?
- What is on the application?
- Who is the C&F committee?
- What is the current C&F process like for applicants?

Overview of the C&F: Relevant Laws

- N.Y. Judiciary Law § 53 – Ct of Appeals can regulate admission of attorneys
- N.Y. Judiciary Law § 90 – Admission and removal from practice by App. Div.
- N.Y. C.P.L.R. § 9401 – establishes C&F Committee
- N.Y. C.P.L.R. § 9404 – establishes C&F

NEW YORK: CURRENT STRUCTURE



Overview of the C&F: Relevant Laws

“Unless otherwise ordered by the appellate division, no person shall be admitted to practice without a certificate from the proper committee that it has carefully investigated the character and fitness of the applicant and that, in such respects, [they are] entitled to admission.”

- CPLR 9404

Overview of the C&F: Relevant Regulations

- Court of Appeals (22 CRR-NY 520.12)
- First Department (22 CRR-NY 602)
- Second Department (22 CRR-NY 690)
- Third Department (22 CRR-NY 805)
- Fourth Department (22 CRR-NY 1015.18)

Jdxns for C&F application:

First Department	Manhattan and the Bronx, only
Second Department	Includes Queens, Brooklyn, Staten Island, and Long Island
Third Department	Includes Albany and Applicants without a New York State Address
Fourth Department	Central and Western New York

Structure of the C&F: Application

[Instructions](#)

[Part I Application](#) (Updated December 31, 2020)

[Part II Moral Character](#)

[Part III Law Related Employment](#)

[Part IV Form Law School Certificate](#)

[50 Hour Pro Bono Requirement](#)

[Skills Form Affidavit](#) (Updated March 2020)

[Pro Bono Scholars Program Affidavit of Completion](#)

Questionnaire

Original employment affirmations or letters

- For each law-related employment

Two original affirmations of “good” moral character

- The affirmations should be completed by reputable persons who have
- known applicant at least 2 years.
- Not the same as the employment affirmations
- Not present employer
- Not persons related to applicant by blood or marriage
- Not other applicants
- Not members of the faculty or administrative staff of any law school attended by applicant.

Law school form

- send directly
- May note any official discipline and/or “discreditable information”

Additional Materials

Structure of the C&F: Questionnaire

- Questions on the C&F deeply interrogate and invade applicant's personal lives and have questionable relevance to an applicant's fitness or ability to practice law.
 - Academics
 - Finances
 - criminal records and other court documents
 - family matters
 - employment history, etc.
- Exhaustive and exhausting.

Structure of the C&F: Questionnaire

B. Education

11. Have you ever been denied admission to any school, college, law school, or other similar institution for stated cause which might reflect upon your character?

No Yes (if "Yes" answer below)

12. Have you ever been placed on probation, dropped, suspended, expelled or otherwise been subjected to discipline by any institution of learning above elementary school level for conduct which might reflect upon your character?

No Yes (if "Yes" answer below)

13. Have you ever been requested or advised by any college, law school, or other professional or graduate school for any reason to discontinue your studies therein?

No Yes (if "Yes" answer below)

Structure of the C&F: Questionnaire

C. Employment

14. List every employment you have had since you reached the age of 21, or in the last 10 years, whichever period is shorter, in chronological order (from earliest to latest). Include your current employment, if any. Include self-employment, clerkships, temporary or part-time employment, military service, employment by members of family or other relatives, employment with or without monetary compensation, law-related work-study employment, and law-related employment for academic credit only, including participation in law school clinics and externships, and work as a research assistant. Note to applicants applying for admission on examination: do not include employments listed on your 50 hour pro bono compliance affidavit or listed on your pro bono scholars program completion affidavit.

16. In connection with **any** employment, whether or not listed in question **14**, have you ever been discharged or requested to resign from or leave your position **for cause**?

No Yes

If **'Yes'**, give the name of each such employer and state the date and circumstances as to each such incident.

Structure of the C&F: Questionnaire

F. Interactions with Law Enforcement

The Appellate Division of the Supreme Court and its Committee on Character and Fitness have a statutorily imposed obligation to carefully investigate the character and fitness of every applicant seeking admission to the practice of law in New York (see CPLR 9404; Judiciary Law § 90 [1] [a]). The information requested here is considered in furtherance of that obligation; like all information disclosed in this application, it is treated confidentially (see Judiciary Law § 90 [10]).

An applicant may be denied admission where the applicant's past conduct demonstrates that the applicant does not possess the character and general fitness requisite for an attorney and counselor-at-law. The mere fact that an applicant's past includes an arrest, conviction, involvement in juvenile delinquency or youthful offender proceedings or other interactions with law enforcement is not, by itself, a basis on which an applicant is denied admission. Nevertheless, the burden of proving that an applicant possesses the requisite character and fitness to practice law is borne by the applicant.

Candor throughout the admission process is required of all applicants, and even convictions that have been expunged should be disclosed in response to this question. Please provide a statement setting forth the facts underlying any incident disclosed here; if police and court records are deemed necessary following review of your application, they will be requested at that time.

- 26.** Have you ever, either as an adult or a juvenile, been cited, ticketed, arrested, taken into custody, charged with, indicted, convicted or tried for, or pleaded guilty to, the commission of any felony or misdemeanor or the violation of any law, or been the subject of any juvenile delinquency or youthful offender proceeding? Traffic violations that occurred more than ten years before the filing of this application need not be reported, except alcohol or drug-related traffic violations, which must be reported in all cases, irrespective of when they occurred. Do not report parking violations.

Structure of the C&F: Questionnaire

G. Civil Matters

27. State whether you have ever testified, refused to testify, or been granted immunity, as a complainant, party or witness in any action or proceeding, or before any prosecuting or investigative agency in any matter.

No Yes

28. State whether you have ever failed to answer any ticket, summons or other legal process served upon you at any time.

No Yes

29. If you answered 'Yes' to question 28, was any warrant, subpoena or further process issued against you as a result of your failure to respond to such legal process?

No Yes

Structure of the C&F: Questionnaire

30. State whether there are any unpaid traffic or parking tickets in your name or attributable to a motor vehicle registered in your name; if **'Yes'**, please complete the following.

No Yes

Description of unpaid ticket(s)	Fines - Amount(s) due and Date(s) due

31. State whether you have ever been charged with fraudulent conduct or any other act involving moral turpitude.

No Yes

32. State whether you have ever been a complainant, party or witness to or otherwise involved in any civil or criminal action, proceeding or investigation not covered by answers to the above questions **27-31**.

No Yes

If you answered **'Yes'** to any of the above questions **27-32**, indicate the question and state the facts as fully as possible. If applicable, provide the name and locality of the court or agency, the approximate date of the action or proceeding, and the judgment or other disposition.

Structure of the C&F: Questionnaire

H. Mental Conditions and Impairments, Substance Abuse and Addictions

34. Do you currently have any condition or impairment including, but not limited to a mental, emotional, psychiatric, nervous or behavioral disorder or condition, or an alcohol, drug or other substance abuse condition or impairment or gambling addiction, which in any way impairs or limits your ability to practice law?

No Yes

If your answer is 'Yes', describe the nature of the condition or impairment.

If your answer is 'Yes', are the limitations caused by your condition or impairment reduced or ameliorated because you receive ongoing treatment or because you participate in a monitoring or support program?

No Yes

If your answer is 'Yes', the Committee on Character and Fitness may require that you provide an Authorization for the Release of Health Information Pursuant to HIPAA (OCA Official Form No.:960) for some or all of the providers of your treatment. The form is available at www.nycourts.gov/forms/hipaa_fillable.pdf.

2019 App
→
question
removed in
Feb 2020

Structure of the C&F: Questionnaire

H. Conduct Relevant to Fitness to Practice

35. Except as otherwise disclosed in this application, within the past seven years, have you exhibited or engaged in any conduct or behavior, including conduct or behavior resulting from a condition or impairment, that could call into question your ability to practice law in a competent, ethical, and professional manner?

No Yes

Relevant Date(s)

Explanation:

36. Are you currently using any illegal drugs?

No Yes

2020 App
→

Structure of the C&F: Questionnaire

I. Child Support

37. As of the date this application is filed, state whether you are or are not under an obligation to pay child support.

I Am I Am Not

If you answered '**I Am**', answer the following questions:

(a) Are you four months or more in arrears in the payment of child support?

No Yes

(b) Are you making payments by income execution or by court agreed payment or repayment plan or by plan agreed to by the parties?

No Yes

(c) Is the child support obligation the subject of a pending court proceeding?

No Yes

(d) Are you receiving public assistance or supplemental security income?

No Yes

Structure of the C&F: Questionnaire

J. Financial Matters / Defaults

40. Do you owe any debt for \$300 or more, which is past due for over 90 days?

No Yes

If **'Yes'**, list each such debt and state the name and address of the creditor, the amount presently owed, the due date, and the nature of the debt.

Structure of the C&F: Questionnaire

L. Loyalty / Oaths / Rules of Professional Conduct

44. Have you ever organized or helped to organize or become a member of any organization or group of persons which, during the period of your membership or association, you knew was advocating or teaching that the government of the United States or any state or any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means?

No Yes

If 'Yes', state the facts.

45. **Please read carefully:** I hereby state that I can take and subscribe to an oath or affirmation that I will support the Constitutions of the United States and the State of New York.

I hereby conscientiously affirm that I am, without any mental reservation, loyal to and ready to support the Constitutions of the United States and the State of New York.

I have read and I will conscientiously endeavor to conform my professional conduct to the Rules of Professional Conduct adopted by the Appellate Division (*see* 22 NYCRR Part 1200).

If you **cannot** so state, affirm and or endeavor, please explain.



Structure of the C&F: Process

No "Flags" on App: Likely Certification Route



App w/ "Flags", e.g. criminal record, financial issues, academic discipline, etc.: Likely Certification Route



Structure of the C&F: Process

Structure of the C&F: Committee

- Gatekeepers
- Nontransparent
- Group of volunteers, at least 3 practicing attorneys, some have judges
 - Majority comes from large or medium-sized firms

“[P]ublic interest groups, solo practitioners, government employees, and academicians are rarely represented on character committees. The profession's exclusion of entire segments of its own constituency as well as members of the lay public from membership on moral character committees necessarily limits the diversity of views represented on these committees.”

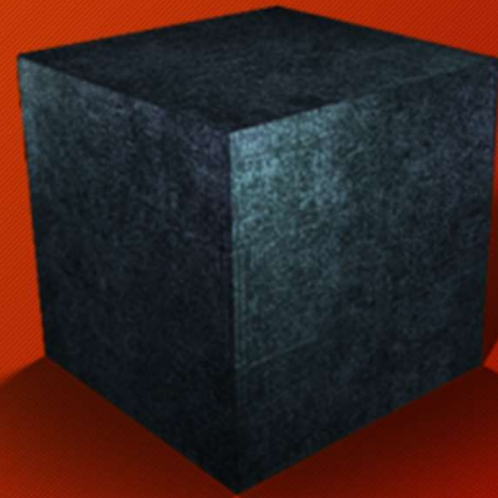
- Professor Carol M Langford, *Barbarians at the Bar*

Structure of the C&F: Committee

- How do C&F members get referred for appointment?
 - Not clear
 - What are their views? How are they reviewed?
 - App Div.
 - Board of Law Examiners
 - Bar Organizations

Structure of the C&F: Problematic

- **Arbitrary and political**
 - Subject to C&F Committee beliefs and prejudices
 - No standardization
- **Disproportionately affects marginalized people**
 - Formerly incarcerated
 - Financially encumbered
 - Radical/Liberatory work
 - Those with mental health challenges or disabilities
 - Black & Brown communities
- **Hard to challenge**
 - State laws allow for a C&F process
 - Fears of retaliation
 - High courts control information access
 - May claim administrative exception



Whole structure is a Black box

Structure of the C&F: Problematic

“I don’t think we as profession get much right when it comes to character and fitness. The more I study this, the more the whole process feels arbitrary, often because the people who make the decisions at the bar associations are people who don’t have experience with the criminal justice system. They don’t understand things like reentry, rehabilitation, and all of the collateral consequences of coming out of prison. And they don’t understand addiction issues either.”

- Professor Shon Hopwood, *A Higher Bar: Revisiting Character and Fitness in the Law*

Potential Legal Violations of Question 26

New York State Human Rights Law, Executive Law § 296(16) – Adult Arrests

With respect to licensing, the government may not inquire about, require disclosure of, or discriminate on the basis of an arrest or criminal accusation that was followed by a:

1. Termination in person's favor under CPL 160.50
2. Adjournment in contemplation of dismissal under CPL 170.55, 170.56, 210.46, 210.47, or 215.10
3. Violation sealed under CPL 160.55
4. Youthful offender adjudication under CPL 720.35
5. Conviction sealed under CPL 160.58 (Rockefeller drug sealing)
6. Conviction sealed under CPL 160.59 (recent sealing law)

Although certain licenses are exempt, there is no exemption for Bar admission.

New York State Family Court Act § 380.1 – Juvenile Arrests

- “Except where specifically required by statute, no person shall be required to divulge information” about juvenile delinquency arrests or juvenile delinquency proceedings.
- A JD adjudication shall not disqualify a person from “receiving any license granted by public authority” or from “engag[ing] in any lawful activity, occupation, profession or calling.”
- Bar admission is not exempt. No statute specifically requires the Bar to require applicants to divulge information about JD arrests or JD proceedings.

Stories By
Individuals
Negatively Impacted
by the C&F

UTB Top Line Demand

- **Abolish C&F**

- Not transparent
- Capricious, arbitrary
- Imprecise
- Discriminatory
- Deters those who have been negatively affected by the law
 - Who know the law the best
- As scholar Deborah Rhode said - Too early and Too Late
- Other considerations discussed later

Common Concerns & Critiques

- If we get rid of the C&F, how do we protect the public from lawyers who cause harm?
- If we get rid of the C&F, how do we as marginalized people protect our communities?
- This argument is moot because the Character and Fitness process rarely excludes anyone
- If we get rid of the C&F, what will we have to replace it?

Common Concerns & Critiques

If we get rid of the C&F, how do we protect the public from lawyers who cause harm?

Exhibit A: Rudy Giuliani

- Graduated from NYU Law
- 1990s Broken Windows Policy in New York City.



Exhibit B: Jeff Sessions

- Graduated from the University of Alabama School of Law
- Played key role in implementing Trump immigration family separation policy.

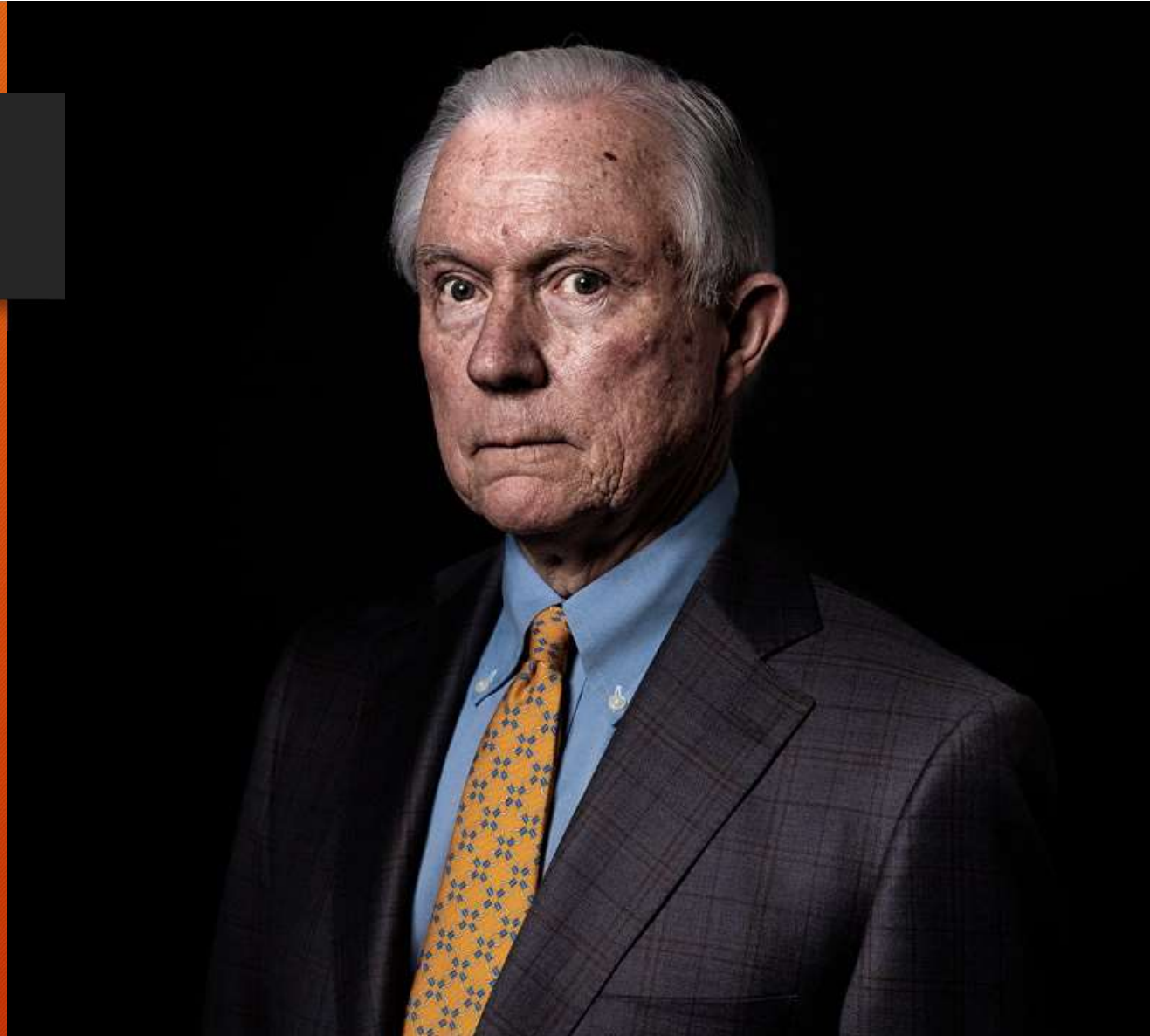


Exhibit C: Police Commissioner Raymond Kelly

- Graduated from St. John's University School of Law
- LL.M. from the New York University School of Law
- Stop-and-Frisk program.



Exhibit D: Richard Nixon

- Graduated from Duke University School of Law
- Launched War on Drugs; Watergate Scandal



Exhibit E: J. Edgar Hoover

- Graduated from George Washington University School of Law
- First director of FBI: enough said.

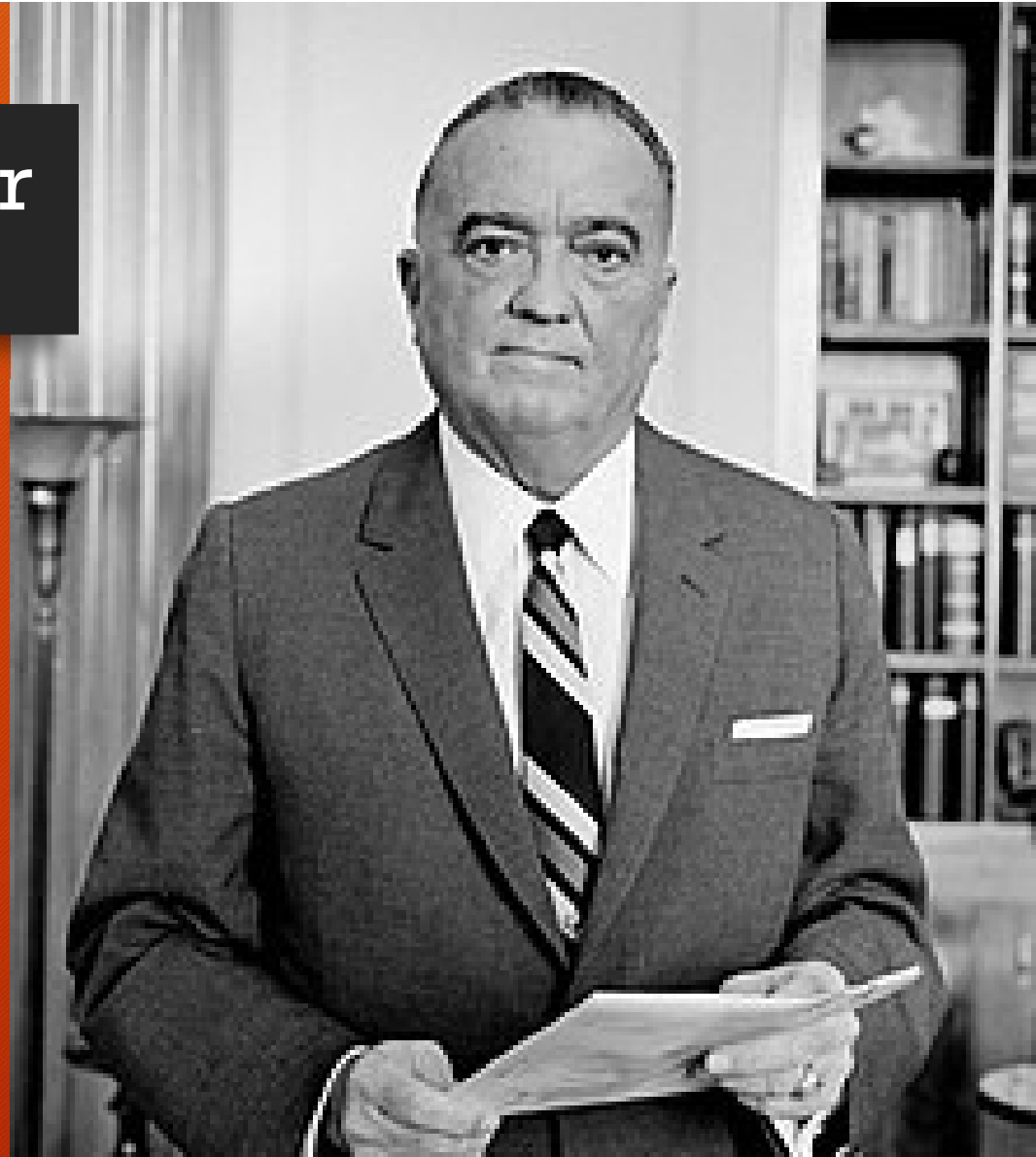


Exhibit F: Chief Justice Earl Warren

- Graduated from predecessor of UC Berkley School of Law
- Supreme Court Justice Earl Warren 1953-1969
- Prior to being a justice, as Attorney General of California in 1942, he organized the State Defense Program, driving force of the Japanese concentration camps.



Common Concerns & Critiques

If we get rid of the C&F, how do we protect the public from lawyers who cause harm?

- Reconsider our understanding of harm
 - Carceral system
 - Immigration system
 - Surveillance state
 - Imperialism

Common Concerns & Critiques

If we get rid of the C&F, how do we as marginalized people protect our communities?

- State accreditation isn't what protects
- Marginalized communities lack of access to civil legal support
- Current legal profession mostly serves interests of white and wealthy

Common Concerns & Critiques

This argument is moot because the Character and Fitness process rarely excludes anyone

- False.
- Exclusion taking place at various milestones, including in decisions to apply to law school

Common Concerns & Critiques

If we get rid of the C&F, what will we have to replace it?

- Maybe nothing, and that's ok
- Many measures currently in place
 - Professional Responsibility courses
 - MPRE exam
 - Orientation to the Profession
 - Attorney discipline
- Consider antiracist CLE-like course

UTB Next Steps

Advocacy Areas

- Specific advocacy around Q26.
- School/Student Advocacy.
- Petition.
- Request for data transparency
- Request a Working Group/Committee to Evaluate the Necessity of the C&F
- Request hearing with C&F committees.
- Request impacted/marginalized individuals to be guaranteed space on the C&F Committees.
- Demands removing similar questions from law school applications.
- Potential Legislation or Litigation.

How to Get Involved

- Twitter: @UnlocktheBarNY
- Email: unlockthebar@gmail.com
- Website: unlockthebar.org
- Join the Slack
- <https://tinyurl.com/UTBContact>
- Share stories: UTB – Story Collection
- We will be providing all the resources we referenced, link to current application, powerpoint on our website.
- If you'd like to get in contact with Roland Acevedo, Esq. please feel free to email legal@rracevedolaw.com

Q&A and Thoughts