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The Los Angeles Teacher Purge: The Structures of an Anti-Communist Offensive

A DISSERTATION

submitted in partial satisfaction of the requirements  
for the degree of

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in Criminology, Law and Society

by

Zac Stone

Dissertation Committee:  
Professor Elliott Currie, Chair  
Professor Valerie Jenness  
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2021



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# DISSERTATION ABSTRACT

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by

Zac Stone

Doctor of Philosophy in Criminology, Law and Society

University of California, Irvine, 2021

Professor Elliott Currie, Chair

Progressive teachers working in Los Angeles public schools became the targets of a multi-pronged attack by anti-communist crusaders in the 1950s. This study examines the Los Angeles teacher purge as a case of formal extrajudicial punishment in which elected and appointed officials devised and implemented a complex scheme to exact economic sanctions on public school teachers for their beliefs. In this historical analysis, archival records from the Los Angeles Unified School District and the California Un-American Activities Committee, among other primary and secondary sources, reveal the machinations of an assault on the civil liberties of a select group of progressive teachers – labor union leaders advocating for racial equality in schools, housing, and the workplace.

This study explores the collaborative efforts of local and state officials who exploited the legislative powers of investigation and capitalized on a nationwide anti-communist moral panic to fire progressive teachers. These efforts were aided by a U.S. Supreme Court willing to carve out constitutional exceptions for teachers based on anti-communists' arguments about the national security threat they posed. Because the Los Angeles teacher purge did not involve the

private sector like most anti-communist firings did, the case offers a unique opportunity to scrutinize the logics of anti-communism as presented by elected and appointed officials both to the public and the judiciary and to hypothesize about the case's contemporary implications.



## INTRODUCTION

It is not difficult in 2021 to imagine how a vocal minority can come to exert significant power over a citizenry that has been consumed by fears of imagined enemies, monstrous people whose vision for America is diametrically opposed to the capitalist ideals of the American dream they cherish – a dream that, incidentally, looks more like *Leave It to Beaver* than, say, *The Jeffersons*. The story of the 1950s Los Angeles teacher purge – *this* story – will strike familiar tones to anyone who pays attention to current events. It is a story contingent, of course, on a confluence of particular historical contexts, but its lessons are still relevant and worthy of examination.

This dissertation explores the series of events surrounding the firing of progressive Los Angeles teachers in the 1950s – the local school board joining forces with the state legislature’s anti-communist investigative committee to develop a workaround to the state’s tenure laws in order to fire teachers with histories of progressive activism; the court battles that enabled the purge and upheld it constitutionally; and ultimately the disintegration of that legal doctrine. This research examines the Los Angeles teacher purge as an example of extrajudicial punishment. The case is unique among other anti-communist efforts for the extreme level of coordination involved by formal actors – from municipal and state government officials all the way up to the U.S. Supreme Court – to subvert constitutionally protected civil liberties by carving out exceptions for teachers and public servants.

The anti-communist attack on public school teachers is exposed in this thesis as a collaborative effort by elected and appointed officials to dispossess progressive teachers of their livelihoods through a legal loophole, not for any type of criminal activity or deviant behavior but for challenging the deprivation of their civil liberties. The movement against teachers coalesced

relatively quickly, but the legal structure that was propped up to facilitate the purge collapsed with comparable celerity. Though it is a unique case, the ease with which the anti-communist crusaders were able to mount a Court-sponsored offensive against progressive teachers, albeit short-lived, offers itself as a cautionary tale with implications for the present and future that are worthy of consideration.

## **SETTING THE STAGE**

California in 1952 had what now seems a scant 11.5 million residents, second to New York's 15 million and roughly tied with Pennsylvania, boasting around seven percent of the U.S. population. Of those roughly 11.5 million Californians, about 40 percent of them lived in Los Angeles County – 4.5 million. Of *those*, nearly half had migrated to the city in the preceding 20 years. The Great Depression famously displaced many agricultural workers, and World War II had caused a sizable defense industry to pop up in California, bringing millions of migrants seeking work. As ever, California was struggling to keep up with a severe lack of housing. To add to that, the baby boom was just beginning to reveal a serious dearth of teachers.

In the summer of '52, the city of Los Angeles was in the process of annexing 28 acres of Chavez Ravine for a public housing project called Elysian Park Heights, the brainchild of the LA Housing Authority's Frank Wilkinson. It was an ambitious project, meant to house 17,000 residents in two dozen mid-rise towers, complete with multiple churches and schools and parks. From its inception, Elysian Park Heights had elicited outcry from two disparate groups – nearby property owners who feared the effects of a massive public housing project next to their land, and the longtime residents of Chavez Ravine.

Chavez Ravine was home to at least three distinct neighborhoods with hundreds of Mexican-American families living in small single- and multi-family homes until the city of Los Angeles, through the process of eminent domain, bought the land with the stated intention of converting it to public housing. Frank Wilkinson had personally walked door to door promising families who were forced from their homes in Chavez Ravine that they would be first in line to fill the new housing that was to be built. Before that could happen though, the city would need to condemn the entire 28 acres and raze all of the existing homes and structures.

If we zoom out a bit momentarily, the bigger picture of 1952 also features HUAC and Joe McCarthy, amid the end of Harry Truman's presidency and the beginning of a new, much more conservative regime led by Dwight Eisenhower and his vice president, vocal anti-communist and California's own junior senator Richard Nixon. Unlike Truman, Eisenhower was no fan of public housing and he shared that antipathy with a growing segment of the population.

In an effort to appease its detractors, the plan for the Elysian Park Heights project was drastically reduced; nevertheless the aforementioned property owners on the edges of Chavez Ravine – white ones primarily, with the support of some city councilors and local media – teamed up to sue the city to prevent them from building any public housing there.

## **PRELUDE TO A PURGE**

In late August of 1952, Frank Wilkinson testified on behalf of the LA Housing Authority at the Elysian Park Heights condemnation hearing, something he had done many times as the agency's Director of Information. Wilkinson came to court that day with a strong record of public housing advocacy, and for racially integrated public housing at that, which – yet a couple years before *Brown v. Board* – was still a contentious proposition among some circles. Not

Wilkinson's, however. Frank and his wife Jean were communists. To be a communist in the United States in the 1940s and '50s meant supporting racial equality. It meant promoting better living conditions and working conditions for *the other half* and particularly improving the wellbeing of Black Americans. The other thing being a communist meant was unfortunately being associated, rightly or wrongly, with some of the world's most notorious despots of the time – Joseph Stalin, Mao Zedong, Kim Il-sung.

Wilkinson's politics were not unknown to the Housing Authority, but they had never prevented him from performing his duties throughout his ten-year tenure with the agency, rather they had motivated him to accelerate public housing construction to help alleviate the city's debilitating housing shortage, the impact of which is often felt acutely by racial minorities.

Upon cross examination during the Elysian Park Heights condemnation hearings, the questions posed by the project's opponents strayed from the housing development toward the personal. On the witness stand, Wilkinson became the target of a smear campaign by those representing local property owners in an attempt to discredit his expertise. They painted him as a brazen radical, asking him pointed questions about his membership in various organizations and his association with known communists. The housing development's opponents reasoned that Wilkinson's radical history could be exploited to label public housing as but a gear in the machinery of communism, an appendage of the communist menace.

Unprepared to address such accusations at an otherwise routine court hearing, Wilkinson invoked his Fifth Amendment privilege against self-incrimination. Following his court appearance, Wilkinson was summarily dismissed from the Housing Authority to modest fanfare. With the eyes of the local press on them, the LA Housing Authority requested the assistance of the state legislature's anti-communist committee in investigating the allegations that Wilkinson

was just one of numerous communist infiltrators working within the Los Angeles municipal government.

The Elysian Park Heights public housing project was eventually abandoned, though not before the families living in Chavez Ravine were displaced and their homes razed. Some years later, the land would be sold to Walter O'Malley and become home to Dodger Stadium.

But all of that is not what this story is fundamentally about. That is merely the *inciting incident*. This story is about *teachers* and the active purging of progressive teachers in Los Angeles that began in 1952. In this dissertation, I will tell the story of the Los Angeles teacher purge, why it happened in the way that it did, and what it means. The Los Angeles teacher purge was a unique manifestation of extrajudicial punishment with implications reaching far beyond a handful of teachers losing their jobs.

### *Forces Converge*

In the wake of the Housing Authority scandal, the California Un-American Activities Committee (CUAC) and its chief investigator, an attorney by the name of Richard Combs, initiated a large-scale investigation into the allegations of communist cells working within the municipal government. Six years earlier CUAC had attempted to get into the teacher purging business but failed to get a foothold in the burgeoning field of liberal teacher removal. This time would be different. This time the committee was not alone – it had the backing of the local school board and a green light from the U.S. Supreme Court.

In the months before the Housing Authority scandal, the Los Angeles Board of Education had commissioned LA County Counsel Harold Kennedy to draft a new rule allowing the Board to fire communists and any employees who refused to answer questions about communism under

oath, such as someone testifying in front of an anti-communist investigative committee. The Board had taken this step in response to the U.S. Supreme Court's decision in the case of *Adler v. Board of Education of New York*.

In March of 1952, the Supreme Court had ruled in favor of a New York City civil service law that denied employment to members of communist organizations and to those known to associate with communists. In effect, the Court officially elevated all public service, including secondary school teaching, to the same level of sensitivity as intelligence gathering and diplomacy.

Justice Minton wrote for the majority, "A teacher works in a sensitive area in a school room. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools." (342 US 485, 1952, p. 493) *Adler* introduced a new legal doctrine that made public sector employment a privilege afforded only to those willing to relinquish certain constitutional rights.

Armed with *Adler*, the new anti-communist Board of Ed rules, and public sentiment that was growing colder toward communists as American soldiers were fighting against allied communist forces in Korea, CUAC's Richard Combs took to his investigation of the Los Angeles Housing Authority knowing it wouldn't take much to link Frank Wilkinson and his agency with at least one other alleged radical working for the city, a Los Angeles school teacher and leader within the progressive teachers' union – Jean Wilkinson, Frank's wife of 13 years.

Both Frank and Jean Wilkinson were called before the California Un-American Activities Committee to testify in October of 1952 about their connections to a purported network of communist organizations and fronts operating throughout the city and Southern California. CUAC had also subpoenaed an associate of the Wilkinsons who had been the target of a

committee's failed foray into education in 1946, an activist and another leader in the teacher's union named Frances Eisenberg. At the hearing, Eisenberg and the Wilkinsons all refused to answer questions about their communist sympathies and associations. CUAC leaders thus concluded that a communist incursion into the city government and public schools was well underway.

Jean Wilkinson and Frances Eisenberg became the first casualties in the war on progressive teachers in California; per the district's new rules, both were fired by the Los Angeles Board of Education for refusing to answer definitively whether they were communists at the Un-American Activities Committee hearing. This was the opening salvo of the anti-communist attack on LA public school teachers.

## **THE PURGE**

While the teachers were still fighting their ouster in court, Los Angeles officials and members of the Un-American Activities Committee were crafting legislation based on the Board of Education's anti-communist blueprint. Signed into law by Governor Earl Warren in 1953, the Dilworth Act and Luckel Law enabled the firing of public employees for admitting they were members of the Communist Party or refusing to answer questions about their communist ties put to them by a governing board or a legislative committee – such as a school board or an Un-American Activities Committee.

The Dilworth Act turned school boards into enforcers of a unique variety of extrajudicial punishment – economic sanctions aimed at public school teachers whose constitutional rights were taken from them by virtue of the Supreme Court's *Adler* decision. The anti-communist officials found themselves in a position to systematically target progressive educators for

inquisition and dismiss those who refused to testify or who could reasonably be accused of harboring communist sympathies.

Indeed, some 1,759 of the Los Angeles Board of Education's 26,000 employees were identified as potential subversives by committee investigators, and dozens of teachers were terminated, most without fanfare or media coverage whatsoever, as a direct result of exercising their Fifth Amendment privilege against self-incrimination in private hearings before CUAC and the Board of Education. Many others resigned, retired, or relocated to escape a toxic environment in which teachers feared discussing certain subjects with their students and colleagues. A teacher who dared to broach the subject of academic freedom even among fellow teachers risked persecution.

By design, the purge was not contingent on finding evidence that communist teachers were attempting to indoctrinate the youth of Los Angeles – evidence that never materialized if it was sought at all. The thing that united the purged teachers was not an intention to overthrow the government or a blind devotion to anti-capitalist dogma; no, the teachers' primary commonality was that they had, each for their own reasons, all refused to be subjected to an invasion of their privacy by their employer. They had rejected the board's authority to deprive them their civil liberties, and for it they lost their jobs, some of them their careers.

### **ALL GOOD PURGES MUST COME TO AN END**

California's anti-communist laws faced legal challenges, but court after court, including the U.S. Supreme Court in 1960's *Nelson v. Los Angeles County*, deemed the various loyalty oaths and requirements for public employment constitutional based on the *Adler* decision. It was not until 1967 in the *Keyishian v. Board of Regents of the University of the State of New York*



case that the Court revisited *Adler* in a meaningful way and reversed its original ruling in the interests of safeguarding academic freedom and protecting teachers' First Amendment rights.

Justice Brennan wrote for the majority in *Keyishian*,

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. (385 US 589, 1967, p. 603)

In removing the keystone that was *Adler*, the structure built in support of the progressive teacher purge in Los Angeles began to crumble. The oaths and laws limiting the constitutional rights of public servants were again challenged and ultimately either dismantled or defanged. In 1982, a handful of purged teachers settled with the city for a modest amount of back pay. Thirty years after the first teachers were fired and their lives upended, their legal challenges were vindicated.

But damage was inexorably done to the dozens of teachers in Los Angeles who were directly fired and to the hundreds more who were hit by the chilling effect of a years-long attack on progressive educators and their constitutional rights. The LA teacher purge was truly a collaborative effort by the Los Angeles Board of Education and County Counsel, the California state legislature, and the federal judiciary, with an assist by anti-communist friendly media – only in working together could they have enabled and actuated the mass suppression of progressive teachers and the diversity of opinion with which those teachers might have imbued their students.

## **A PREVIEW OF WHAT'S TO COME**

In one sense, this thesis is a case study in *extrajudicial punishment* – elected officials devising a complex scheme to exact economic sanctions on public school teachers for their beliefs, by exploiting a legal loophole endorsed by the U.S. Supreme Court. But it is also a story. Every sentence of this thesis is *not* in service of analysis. I have endeavored to balance analysis and storytelling as best I can, no easy task. It is not a simple narrative either; at times I have had to jump around chronologically and reiterate certain events, laws, court rulings, and such as various plot lines converge. Please forgive repetition that serves to clarify the convoluted sequence of events.

In the following chapters I will situate the events of the Los Angeles teacher purge historically and analytically. In the next chapter, I review the extant literature on the structures that enabled and bolstered the teacher purge: economic sanctions, legislative investigation, and theories of moral panic and anti-communism broadly.

Following that, the historical narrative begins with Frances Eisenberg, the Los Angeles teachers' union, and California anti-communists' first failed efforts against progressive teachers in the mid-1940s. These initial events touch on the motives underlying anti-communism, introducing anti-communism as a reaction both to global forces in the context of post-war international relations and local efforts by progressive activists to address deep-seated racial inequalities and to realign power structures away from the white ruling class.

The work of the California Un-American Activities Committee is then examined, offering some explanation of why the anti-communists' first foray into controlling educators failed. I discuss the committee leaders' strategic shift and evolving objectives – from propaganda and superficial publicity to effectively quashing progressivism – also touching on the utility of

legislative investigation and the committee's long-term effect on the principle of legislative immunity.

I explore the legal foundation of the Los Angeles teacher purge in the Supreme Court's *Adler* decision, which offers some hints at the potential chilling effect of loyalty oaths and rules being proposed and adopted that limited the constitutional rights of public servants.

The Elysian Park Heights incident then leads us into the events of the Los Angeles teacher purge, with CUAC investigators attempting to connect Frank and Jean Wilkinson with the once and future anti-communist target Frances Eisenberg, making ever clearer the true motivations behind anti-communism in LA, as CUAC and Los Angeles officials took aim at progressives with histories of anti-racist activism. I revisit the question of how this effort by anti-communist crusaders differed from previous attempts to exert control over the classroom – by eliminating the requirement that there be evidence of wrongdoing.

I follow this tactical shift by the anti-communists – focusing away from the actions of teachers and instead punishing teachers for resisting a contrived loyalty inquisition – through its codification by the state legislature and vindication in court, scrutinizing arguments presented by both the anti-communist crusaders and their crusadees, including some *supremely* questionable logic by our nation's highest court.

When the moral panic floodwaters recede, the anti-communist rationales and strategies are exposed for what they are – attacks on public servants that relied on misguided interpretations of the Constitution. In the concluding section I discuss the significance of the Los Angeles teacher purge and its enduring importance now, in this moment in time. Details on my data sources and research methods can be found appended.

## REVIEW OF THE LITERATURE

This section will set the *theoretical* stage for the Los Angeles teacher purge, a story of punishment, politics, and moral panic. In keeping with the general theme of this dissertation, a dip into the annals will also help to contextualize the purge amid the broader history of anti-communism.

### *Economic Sanctions*

Disregarding for a moment the collateral consequences of stigma and ostracization faced by the teachers dismissed, termination of employment is fundamentally an economic sanction. But even within formal economic sanctions, the Los Angeles teacher purge represents a unique type of punishment.

To a political scientist the term *economic sanction* might evoke an action taken by one nation or an international coalition against another nation to discourage some kind of norm-breaking or adversarial behavior – multilateral disinvestment from South Africa due to apartheid, various arms embargoes against aspiring nuclear powers, the longstanding trade embargo of Cuba by the U.S. stemming from Cold War tensions, etc. Of interest to researchers of formal punishment, though, are the many domestic economic sanctions that include things like monetary fines, cash bail, asset forfeiture, and foreclosure. Notably these punishments generally serve purposes of retribution, deterrence, and occasionally restoration. And they are meted out by courts and regulatory agencies in response to criminal or civil infractions. (Miethe and Lu 2005)

License revocation is one formal economic sanction that shares similarities with our teacher purge. Business owners and individuals who run afoul of rules and regulations risk losing

their license to operate their restaurants and salons and automobiles and such.<sup>1</sup> And unlike fines and asset forfeiture, though it may also have a deterrent effect, the primary purpose of license revocation is *incapacitation* of the offender. (Malsch and Duker 2016) Forcing a restaurant to shut down prevents it from serving unsafe food. Revoking the license of a reckless driver ostensibly keeps them off the road.

In some ways, this mirrors the incapacitative effect of firing a leftist teacher, which prevents them from being able to indoctrinate students with progressive ideology, while serving as a deterrent to prospective teachers who might consider doing the same. One glaring difference here is of course teachers were not fired for indoctrinating students, but for invoking the Fifth Amendment, by way of *insubordination*. The punishable offense and the punishment are divorced from one another, while the imagined offense of indoctrination is left uninvestigated.<sup>2</sup>

Yet another real difference is the heavy involvement of the state legislature in the firing of progressive teachers, which provides as good a segue as any to discuss anti-communism's special place in the history of legislative investigation.

## LEGISLATIVE INVESTIGATION

The framers of the U.S. Constitution neglected to specify what kinds of investigatory powers the Congress should possess when that document was signed into law. Several of them were afforded the opportunity to weigh in again in 1792, however, when the House of Representatives approved the first congressional investigation – an inquiry into the defeat of a

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<sup>1</sup> Occupational licensing also serves as a barrier to employment and entrepreneurship by historically disadvantaged groups, but that is a discussion for another dissertation.

<sup>2</sup> One other key difference is that school teachers are *public sector* employees – a point to which I will return.

company of the U.S. Army under the command of Major General Arthur St. Clair. (273 US 135 1927)

President George Washington deferred to his cabinet in deciding whether to abide by the request of the House for documents relating to the military expedition in which 657 U.S. soldiers were killed by the Western Confederacy, a group of Native Americans resisting the territorial expansion of the United States. Secretary of State Thomas Jefferson, Secretary of the Treasury Alexander Hamilton, Secretary of War Henry Knox, and Attorney General Edmund Randolph agreed unanimously that the House had the right to conduct the inquiry and to request records from the Executive branch. It was decided that the President should furnish whatever documents were requested so long as their disclosure would not harm the public.<sup>3</sup>

When used in earnest, the powers of legislative investigation can be an effective tool for gathering intelligence and informing evidence-based legislation. Investigation has been called the most important function of congress in times of politically divided government – it is a critical check against abuses by the executive branch.

Scholarship on legislative investigation can help contextualize the events surrounding the LA teacher purge, which were driven in large part by the California Un-American Activities Committee. Such work has naturally tended to focus on the United States Congress and its oversight of government agencies and the executive branch; congressional investigations are almost entirely targeted at alleged government corruption of one form or another, occasionally notable episodes or issues of public interest, and rarely such intangible threats as communism. In particular, a significant body of scholarship has developed around the interplay between legislative investigation and partisanship.

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<sup>3</sup> For the record, Congress did not find St. Clair at fault for the army's defeat, rather contractor fraud was identified as having debilitated the military in advance of their encounter with the Western Confederacy.

Several quantitative analyses have shown that ideological polarization and divided government – when the executive and legislative branches are controlled by opposing political parties – encourage investigative oversight (Kriner and Schwarz 2008; Parker and Dull 2009, 2013), though the benefits of increased congressional oversight to effective governance have not been established. One study demonstrated how the 1913 enactment of the 17th amendment – instituting the direct election of U.S. senators – immediately increased the frequency of senate investigations (Lowande and Peck 2017). And similar work has illustrated the political costs borne by presidents who face congressional investigation (Kriner and Schickler 2014).

### *Framing*

A separate branch of inquiry has explored discourse and narrative framing in the legislative setting, particularly debates and committee hearings open to public observation and/or those with available recordings and transcripts. Such research has investigated dog-whistle political messaging in debates on immigration in the U.S. congress (Chock 1991, 1994, 1995) and more broadly in post-Civil Rights Era political rhetoric (Haney-Lopez 2015), the construction of a master narrative by members of the congressional committee investigating the Iran-Contra Affair and that committee's interaction order (Bogen and Lynch 1989, Barnouw and Bogen 1996, Halkowski 1990), the Watergate investigation as an example of Durkheim's "civic ritual" (Alexander 1989), the depiction of welfare recipients in the congressional hearings that culminated in the 1996 welfare reform legislation (Gring-Pemble 2001), and competing narratives in congressional debates about the nonprofit sector (Jacobs and Sobieraj 2007), among other topics.

A key finding from the literature on legislative investigation is the influence of media coverage on the success or failure of a committee to achieve goals, whether political or governmental. (Kriner and Schickler 2014, Nyhan 2015) As Kriner and Schickler so plainly put it, “the media is the key link between actions in the committee room and public awareness; investigations are unlikely to sway public assessments without any reporting in the mass media.” (2014, p. 523)

Importantly, many of these studies illustrate the ways in which legislative committees can shape or manufacture the incident or social problem under investigation through members’ discourse and by framing the issue to construct a narrative favorable to an interpretation that benefits particular policy outcomes or that resonates with voters.

This literature lends support to Murray Edelman’s seminal work on purposive symbolism in politics (1964, 1971, 1977, 1988). Edelman writes, “Government affects behavior chiefly by shaping the cognitions of large numbers of people in ambiguous situations. It helps create their beliefs about what is proper; their perceptions of what is fact; and their expectations of what is to come.” (1971, p. 7) Edelman adds that officials use symbols like “society” and “the national interest” that “induce people to acquiesce in deprivations of many kinds.” (1977, p. 153)

When exploited, legislative investigation can be targeted to appeal to one’s partisan base, reinforcing particular beliefs and fears. In the case of the anti-communist committees, legislative investigation was used to manufacture and bolster moral panic in the way that Edelman describes.

## **MORAL PANIC**



Moral panic is the theory most commonly associated with anti-communism and the witch hunts to which it is often compared. The moral panic perspective informs this study, but it also neglects key features of Los Angeles teachers' story – in particular, the unstated sociopolitical motivations of California's anti-communist crusaders and the long-term repercussions of their actions.

The concept of moral panic was a product of the social constructionist movement in the field of sociology and in particular the sociology of deviance during the 1960s and early 1970s. This paradigm shift, the product of a tumultuous moment in history, marked the birth of what would come to be known as critical criminology. (Sykes 1974) Stanley Cohen gave definition to a social phenomenon that he had observed relating to a demonized subculture of British adolescents in the late 1960s. He wrote,

Societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible. Sometimes the object of the panic is quite novel and at other times it is something which has been in existence long enough, but suddenly appears in the limelight. Sometimes the panic passes over and is forgotten, except in folklore and collective memory; at other times it has more serious and long-lasting repercussions and might produce such changes as those in legal and social policy or even in the way the society conceives itself. (Cohen 1972, p. 1)

In sum, consensus about a threat to the shared values of a society reaches a quorum, moral entrepreneurs (Becker 1963) exaggerate the danger posed by the threat – the group, attitude, or idea – and the issue is either addressed or forgotten about.

The moral panic phenomenon, of course, existed long before the concept was developed in the 1970s. Indeed, it is the classic *witch hunts* that occurred in Renaissance Europe and colonial North America that provide the archetypical case of the persecution of metaphoric bogeymen (Ben-Yehuda 1980) – and incidentally an exemplar of the social construction of deviance (Erikson 1966, Currie 1968) – but literal witch hunts were recorded as early as the fourth century BCE (Behringer 2004), and it seems safe to presume that moral tastemakers were employing xenophobia to shape the social world even before recorded history. It was not until Cohen and Jock Young and their colleagues began to build on the newly accepted understandings of social construction that emerged in the 1960s, however, that moral panic was given a name and requisite attention within the field of sociology.

Among the significant events that catalyzed moral panic scholarship, there were perhaps none more influential than the anti-drug crusades that resulted in vastly increased sentences for many low-level drug users, generally replacing more rehabilitative solutions (see Duster 1970, Young 1971). Moral panic scholarship has highlighted the disproportionate concern given to street crime and criminal victimization (Hall et al. 1978, Best 1999, Garland 2001, Scheingold 2011), drug use (Ben-Yehuda 1986, Stolz 1992, Reinerman and Levine 1997), AIDS (Watney 1997), child abuse and satanic ritual abuse (Showalter 1998, Hacking 1999), alcohol consumption during prohibition (Gusfield 1986), and terrorism after September 11th (Rothe and Muzzatti 2004, Mueller 2006).

According to major moral panic theorists Goode and Ben-Yehuda (2010), the key features that identify the phenomenon are (1) concern—an event or behavior that sparks interest, (2) hostility toward the perpetrators, *folk devils*, as it were (3) wide consensus or broad negative social reaction among the populace, (4) disproportionality of the reaction to the ostensible threat, and (5) volatility of the reaction, the relative unpredictability of how long the subject will hold the public’s interest.

The *disproportionality* aspect is perhaps the most problematic of the key features of moral panics. Evaluations about the appropriateness of a societal reaction to a social problem are subjective – to measure the reaction to one event against another requires socially constructing a measurement. Further, the moral panics most frequently identified as such by sociologists are those driven by moral entrepreneurs espousing socially conservative ideals, anti-communism being no exception to this.

Still, the moral panic framework is one that is useful in contextualizing the Los Angeles teacher purge within the greater anti-communist fervor. There was something that excited a wide swath of the country to demonize a small group for the perceived threat they posed to America’s safety and to normative ideologies; looking back, in spite of a number of verifiable cases of Soviet spies working within America’s borders and government, it is obvious the reaction was disproportionate to any threat posed by the rank and file communists largely targeted for persecution. And then – as quickly as it emerged – anti-communist sentiment dissipated.

Goode and Ben-Yehuda also write about the moral panic research “devoted to debunking the stated reasons for the concern and tracing out the more substantial or ‘genuine’ underlying motives,” (2010, p. 36) and that is largely where this project exists within the moral panic literature.

## **ANTI-COMMUNISM**

Looking past the rhetoric, anti-communists in California were interested in more than exposing supposed subversive activity and more than vaguely defending ideology. They had a political agenda slightly less noble than defending the Constitution – indeed, their actions rested on an interpretation of the Constitution that denied public employees their freedom of speech and assembly and protections against self-incrimination. It is worth briefly recapping the phenomenon of anti-communism as it played out in the 1940s and ‘50s.

McCarthyism and anti-communism are well-trodden topics of inquiry, to be sure. This review will necessarily omit more texts on the subject than it will include, but it should offer a glimpse of the field and how influential scholars have addressed the substantive issues that concern our case.

By and large, studies of anti-communism in the U.S. are presented in the form of monographs and they either offer broad coverage of America’s two red scares and the societal reaction to various perceived threats (Ceplair 2011; Haynes 1996; Heale 1990, 1998; Powers 1998; Schrecker 1998, 2002) or they limit their scope to one class of victim – organized labor (Schrecker et al. 2004), academia (Diamond 1992; Schrecker 1986), gays and lesbians (Johnson 2009), the motion picture industry (Ceplair and Englund 1983) – or the three most significant national-level institutional champions of anti-communism, J. Edgar Hoover’s FBI (Schrecker 2002; Theoharis and Cox 1988), the House Un-American Activities Committee (Carr 1952; Goodman 1968; Zeisel and Stamler 1976), and Joe McCarthy (Griffith 1987; Oshinsky 2005; Reeves 1982).

Among those scholars offering broad context to American anti-communism, M.J. Heale (1990) chronicles the country's two red scares, linking fear of communism with (1) the destabilizing effects of industrialization in the nineteenth century and (2) perceptions of global insecurity in the twentieth.

On the issue of screening teachers and university faculty, Heale writes that, far from simply barring communists from positions in education, the measures that states like California had taken to protect young minds from indoctrination had the effect of excluding many educators who had refused to cooperate with anti-communist investigations on principle, rather than out of self-interest. (1990, p. 187)

In another text, Heale addresses state-level investigative committees directly. Heale argues that state investigative committees were attractive to their proponents as political tools against the New Deal reforms of the 1930s. "The pluralistic socioeconomic characteristics of [the states with little HUACs]," Heale writes, "tended to promote polarized or competitive political systems, affording party politicians a temptation to capitalize on the [Communist Party] presence." (1998, p. 15)

Anti-communism's most prolific scholar, however, is almost certainly Ellen Schrecker, whose books and articles include (among dozens of others not mentioned here) broad overviews of the topic (1998, 2002), narrower examinations of organized labor and academia (1986, 2004), and even a useful guide for researchers of anti-communism (1988).

In her broader efforts, Schrecker emphasizes the FBI's significant but underreported role in anti-communism; she contends that "McCarthyism" would be called "Hooverism" if we had known in the 1950s what we learned in the 1970s after the passage of the Freedom of Information Act. She writes that under J. Edgar Hoover, the FBI "designed and ran much of the

machinery of political repression, shaping the loyalty programs, criminal prosecutions, and undercover operations that pushed the communist issue to the center of American politics during the early years of the Cold War.” (1998, p. 203)

### *Race*

Racism was a key element of anti-communism, despite the fact that the vast majority of communists and anti-communists alike were white. As Schrecker describes, the Communist Party USA “was for years the only primarily white organization not specifically devoted to civil rights to pay serious attention to African Americans.” (1998, p. 32) Rank-and-file communists, particularly those involved in organized labor, devoted themselves to the struggle against racial discrimination, taking aim at segregated workplaces, schools, and housing. This did not endear them to *many* white people.

“Anticommunism proved invaluable to white supremacists during the 1940s and 1950s,” Schrecker writes, “It provided them with a more up-to-date and respectable cover than mere racism and hooked them into a national network of right-wing activists.” (1998, p. 391) The correlation between anti-communism and racism was most *transparent* in the South, but it was not limited to the former Confederacy by any means, as this story will demonstrate.

### *Two-Step Process*

On another issue of particular import to this project – formally promoted extrajudicial punishment – Schrecker notes the two-step process initiated by “an arm of the state like HUAC or the FBI” and finalized by *private* employers. She writes, “The coercive power and legitimacy of these official agencies were crucial to the process.” (1998, p. 272) Schrecker estimates that between ten and twelve thousand people lost their jobs nationwide for their real or alleged

communist ties. It was through the participation of the private sector, Schrecker writes, that McCarthyism was able to “effectively stifle political dissent.” (2002, p. 86)

The anti-communist movement was almost entirely reliant on informal punishment – the state cannot punish what isn’t criminal, so state actors convinced the citizenry to do what they could not. The most famous example of this was the Hollywood blacklist, which grew from the infamous Hollywood Ten in 1947 to hundreds of writers, actors, directors, and other members of the creative industries by the time the blacklist was broken more than a decade later. But lawyers and doctors and tradesmen were also targeted, among others, and suffered their own informal economic sanctions.

## **MEANWHILE IN LOS ANGELES**

Our fired teachers then present themselves as something of a *trouble case* in this two-step process that is usually reliant on the private sector to follow through on tips generated by an investigative apparatus of the state. The importance of teachers being *public sector* employees to this story cannot be overstated. This is what makes the Los Angeles teacher purge so interesting. Outsourcing anti-communist firings to private sector employers is easy and requires little to no accountability by elected officials or political appointees. When the government is forced to complete both steps of the two-step process, and thus obligated to defend their decisions to the public and to the justice system, the logic of anti-communism presents itself for examination.

When the Los Angeles Board of Education and the California Un-American Activities Committee came together to develop their teacher purge scheme, they capitalized on the moral panic that CUAC had already been fomenting in California for a decade and they exploited a

legal loophole, inventing a rule to circumvent the judiciary to fire teachers for exercising constitutionally protected freedoms.



## **FRANCES EISENBERG and AFT LOCAL 430**

Every weekday morning Frances Eisenberg took the train to 11th and Broadway, stepping out in front of the Los Angeles Examiner building, a grand structure in the Mission Revival style commissioned by William Randolph Hearst. Across the street, a small nondescript office building housed the Board of Education headquarters. There, she and her fellow substitute teachers waited like chattel until they were dispersed one by one, sometimes in the direction from which they had come, to stand in for those fortunate enough to have full-time teaching positions in the depth of the Great Depression.

### *Origins*

It was in the mining town of Louisville, Colorado, that an adolescent Frances Susan Robman was first introduced to the foundational principles of organized labor; and it was there that she first witnessed the great lengths to which anti-union interests would go in order to prevent workers from organizing.

On April 20, 1914, the Colorado National Guard and Colorado Fuel and Iron Company guards set upon a tent colony of some 1,200 coal miners and their families in Ludlow, Colorado, resulting in the deaths of 25 people, including women and children. The culmination of a months-long labor uprising known as the Southern Colorado Coalfield War, the fallout from the Ludlow Massacre bled north, where striking miners in Louisville were receiving rifles sent by the United Mine Workers of America union in anticipation of more violence.

Just one week after Ludlow, nine-year-old Frances and her family took cover in the basement of her father's general store in Louisville while a militia from the local Hecla Mine exchanged gunfire with union miners outside. Frances recalled her father explaining at the time

that the miners couldn't afford to pay him and feed their families on the meager wages the mine was offering.

Soon the family would migrate west, to the warmer climate of Los Angeles, where the Robmans operated a small produce shop and where Frances was encouraged to pursue her academic interests.

"I decided to become a teacher in the eighth grade at Lafayette Junior High School," Eisenberg says. (Eisenberg oral history, 1977) An English teacher at Lafayette took an interest in Frances, persuading her to run for student body secretary. Near the end of her junior high school career, Miss Mary Lynn brought Frances and her mother to the superintendent's office to obtain the requisite permissions for Frances to attend Los Angeles High School.

LA High School still sits at the intersection of Olympic and Rimpau Boulevards, a prison-like collection of uninspired concrete boxes; but before being destroyed in the 1971 Sylmar Earthquake the school was an architectural jewel of brick and glass, with an ornate tower that overlooked all of central Los Angeles. Frances excelled there academically, a member of the Forum Club and lab assistant to the physiology teacher.

Upon graduating from what was then the most prestigious public high school in the region, she went on to attend the Southern Branch of the University of California, renamed the University of California at Los Angeles shortly before she graduated in 1927. At the time UCLA was overgrowing its campus on Vermont Avenue in East Hollywood, now home to Los Angeles City College.

Frances left Los Angeles to attend UC Berkeley for her teacher training, but returned to LA before she could finish the program to care for her ailing mother. She successfully transferred to USC, where she earned a teaching credential in 1928 and was one of eight

graduates of the program chosen to fill coveted full-time teaching positions in public schools.

For two years she taught English at Frick Junior High School in Oakland before meeting the man she would marry.

Meyer Eisenberg worked in the garment industry where he befriended Frances's uncle. He had been a factory worker in New York and even owned his own small operation before the stock market crash in 1929 had forced him to close shop. A widower, he and his three children ventured west, using a family connection to secure a job in Berkeley making garments.

Within a few months of meeting each other in 1931, the two were married, and Frances made the decision to leave her job, a choice many women had made for many years, but one that Eisenberg soon came to regret. "We did not understand that the depression was nationwide, or statewide, or I certainly wouldn't have resigned my job in Oakland," she said. "This dawned on us piece by piece, the nature of the economic condition of the country." (Eisenberg oral history, 1977) The family moved to Los Angeles, where both Meyer and Frances had family ties, but they continued to struggle financially while Meyer's partnership with another garment-maker there floundered.

### *The Eisenbergs make do in LA*

As with most professions, the Depression hit teaching hard. California lost more than 1000 full-time teachers in the early 1930s for lack of funding. Barring full-time employment, Frances Eisenberg sought out the closest alternative, substitute teaching. For three years, five days a week, nine months out of the year, Eisenberg made the early morning trek downtown from her home in Hollywood, just to get back on the train toward schools across the city – and that was if she was fortunate enough to receive a placement for the day. As now, substitutes were

expected to teach all variety of subjects – chemistry and biology, civics and history, English, physiology, and any other subjects offered by individual schools.

As a substitute, Eisenberg adopted a leadership role, co-founding the Probationary and Substitute Teachers Organization. State law allowed for substitutes to effectively replace full-time faculty indefinitely, with no chance of advancement or tenure. Eisenberg fought for the rights of substitute teachers, successfully lobbying the state legislature in support of a bill that would guarantee full-time teaching contracts for substitutes after a certain length of satisfactory performance in one position.

### *Canoga Park*

In 1936, Eisenberg found herself filling one of these long-term substitute positions on the far edge of the Los Angeles school district at Canoga Park. Canoga Park was a streetcar suburb, located at the western terminus of the Pacific Electric Railway's San Fernando Valley line. It was incorporated into Los Angeles five years after its founding in 1912, and remained a small agricultural community until the Second World War brought manufacturing by way of the aviation industry.

Eisenberg impressed the administrators at Canoga Park High School in her temporary role. They appointed her to a long-term substitute position, and, as per the law she was integral in establishing, the school hired her to teach full time by the end of 1936. In her first full-time teaching position at Canoga Park High School, Eisenberg was assigned to teach English. Her predecessor had overseen the school's newspaper production, and Eisenberg sought out Frances Hove, whom she described as "the best journalism teacher in Los Angeles" (Eisenberg oral history, 1977), to prepare Eisenberg to continue supervising the production of the *Hunters' Call*.

Eisenberg threw herself at her work, and by all accounts she was generally beloved by students and respected by her colleagues. Every school day for more than ten years Frances would hop in the carpool with a few fellow teachers and drive the 20-odd miles out to Canoga Park from her home in East Hollywood, and for more than ten years she did so without incident.

## **LA FEDERATION OF TEACHERS**

As she had adopted a leadership role among the substitutes, Eisenberg continued this activism in her full-time role. She was an early member of the Los Angeles chapter of the American Federation of Teachers union, Local 430. In addition to writing and editing the LA Federation of Teachers' newsletter, Eisenberg and her compatriots championed stronger teacher tenure laws, racial integration of the schools, and the hiring of more faculty of color.

Los Angeles's Local 430 practiced what might be considered social movement unionism. The union advocated for broadly anti-racist policies that challenged racial inequality in schools and *outside* of schools, in the communities union members lived and served.

As New York's teachers' union, Local 5, had established the Harlem Committee, which provided teachers with curricula about African American history, Los Angeles's Local 430 had lobbied the Los Angeles Board of Education to hire more African American teachers and expand African American history curriculum. Eisenberg had been on the Federation of Teachers team in 1943 that publicly presented a proposal "for changes in educational curriculum and materials to strengthen interracial democracy," (LAT 12/14/1943) and had used the union newsletter to promote these issues, as well as publicizing the habitual teacher shortage and its effects on teachers and students.

Local 430's focus on segregation and racial disparities was seen by some as going beyond the scope of a labor union and spurred criticism by a vocal minority of the membership, who ultimately brought their claims to the American Federation of Teachers. In response to these complaints, in September of 1948, three members of the AFT executive board traveled to Los Angeles to conduct an investigation into social and political activism by Local 430 leadership.

It is a fact that the LA Federation of Teachers was dominated by communists and communist sympathizers. The Eisenbergs were communists, becoming members of the party in 1936, and indeed, most among the ranks of the Local 430 leadership were. Most members of the Communist Party were not particularly conspicuous about their party membership outside of their immediate social circles, choosing not to go on the record about their communistic proclivities for the obvious reason that it put a target on them by those who sought to conflate their activism with anti-Americanism. But it is not inexplicable, based on their statements and actions, that Eisenberg and the Local 430 leadership would be attracted to a political party or the social movement it embodied that closely mirrored their personal ideologies.

Anti-communism is often characterized as a witch hunt, but there is one key difference between the two. As far as we know, no witches were ever uncovered by any witch hunt or trial. There *were* communists, both members of the Communist Party USA and those who espoused communist ideals outside of the party structure – not nearly as many as anti-communist crusaders would contend, but there were a fair number of communists in America, including Eisenberg and some of this story's other leading characters. By all accounts, however, the vast majority of American communists in the 1930s and '40s were *not* advocating for the violent overthrow of the government. In that sense, anti-communists were indeed hunting imagined foes.

What communists in America *were* doing was building strong unions, reallocating political power to the working classes, and proposing and championing significant changes to the social order specifically in regard to racial inequality. To be an American communist in the '30s and '40s meant, fundamentally, supporting greater racial integration in schools, in housing, and in the workforce. As much as it was an effort to weaken the power of organized labor, anti-communism in the U.S. was a tacit – *usually* tacit – rejection of communism's anti-racist efforts and ideology, dressed up as a pro-democratic repudiation of totalitarians whose communist visions were far from those of most American communists.

Left-led unions that did not discriminate against communists were an integral part of the anti-racist social movement that manifested largely in response to segregation. In Los Angeles, the AFT Local 430 leadership attempted to use what power they wielded to desegregate schooling, modify curriculum to include Black history, and generally narrow the racial divide in education. For this and related actions taken by the union on behalf of other regional organized labor efforts,<sup>4</sup> Local 430's more reactionary membership requested an investigation by the AFT national office.

And on September 20, 1948, the AFT notified Local 430 that its charter had been revoked. In a letter, AFT Secretary-Treasurer Irvin Kuenzli wrote to the membership that “the conduct of Local 430 has brought the American Federation of Teachers into disrepute in the Los Angeles community,” and, he wrote, the national office believed that “the present policies and leaders of Local 430 are not operating in harmony with...the principles of the national federation.” (Kuenzli letter, 1948, Eisenberg Collection 1) The AFT chartered a new chapter, Local 1021, to replace Local 430, installing an acting president of their choosing.

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<sup>4</sup> Local 430, a subsidiary of the AFL-affiliated AFT, had cooperated with the UPW, a CIO-affiliated union, on another school employee salary increase dispute.

The new chapter was slow to grow its membership, however, because the Local 430 refused to disappear quietly. They rebranded as the LA Federation of Teachers and continued independently until 1955 for reasons that will soon become clear. But before the dissolution of Local 430, Eisenberg's activism within the union and her vocal efforts to address inequality of opportunity in Los Angeles schools made her a target for Jack Tenney and his merry band of anti-communist crusaders in 1946.



## COMMUNIST INCURSION AT CANOGA PARK

At a campaign event at the home of Bennet and Rosalind Nofziger in Canoga Park in 1946, Jack Tenney, chair of the California Un-American Activities Committee, was approached by the host and informed that his committee might be interested to learn about the communist incursion among the faculty of the local high school, from which her son had recently graduated and that her daughter still attended. Specifically, Mrs. Nofziger identified two teachers that were attempting to indoctrinate their students with communist propaganda, Mrs. Blanche Bettington, social studies teacher in Canoga Park for 23 years, and one Frances Eisenberg, English and journalism teacher at the high school for some ten years.

On the afternoon of October 2nd, 1946, Eisenberg and Bettington were summoned to the principal's office where they were served with subpoenas by an LA County Sheriff's Deputy. They were to appear before the California Un-American Activities Committee in a state building downtown the following week.

### *Canoga Park Hearing, October 9, 1946*

Eisenberg and Bettington appeared at the Tenney Committee hearing the next Wednesday. It was a warm fall morning, and more than a hundred people were packed into the hearing room located within the California State Building opposite City Hall on Spring Street in downtown Los Angeles, including representatives of the local press. The Committee heard testimony from Eisenberg, Bettington, the Canoga Park High School principal, and a handful of students, former students, and parents alleging communist indoctrination by the teachers.

Some time after the hearing Tenney claimed that his committee "had been flooded with protests from parents of students attending the Canoga Park High School protesting the alleged

Communist indoctrination injected into courses taught by Mrs. Eisenberg and... Mrs. Blanche Bettington.” Complaints, Tenney noted, that were “entirely unsolicited.”<sup>5</sup> (CUAC 3, 1947, p. 115)

True to form, at the Canoga Park hearing Tenney took the opportunity to air his grievances with any and every bugaboo he could possibly identify with the education system as it stood in 1946. Tenney excoriated the “Senior Problems” course taught by Eisenberg and Bettington, which was designed to prepare graduates-to-be for the real world, the curriculum for which was developed at the district level. Committee members took turns questioning Eisenberg about her role as editor of the school’s newspaper *The Hunter’s Call* and faculty sponsor of the Canoga Park High School chapter of the World Friendship Club (alongside Bettington) – several years earlier, Canoga Park’s World Friendship Club had invited journalist and attorney Carey McWilliams to speak to students about his experiences representing striking migrant farm workers during the Great Depression.

One father of a Canoga Park student testified that after taking Senior Problems with Bettington his daughter had “started to turn into a young Communist.” (CUAC 3, 1947, p. 121) The committee painted the school’s principal, Charles Nettles, who came to the teachers’ defense in his testimony, as a rube who “could have been easily deceived as to what was actually being taught” at Canoga Park High School.

Tenney took great issue with Eisenberg’s role as the teachers’ union’s representative on the board of directors of the People’s Education Center. The People’s Education Center in Los Angeles was an offshoot of the California Labor School based in San Francisco, itself an

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<sup>5</sup> Though possible, it should be noted that no purported flood of complaints were found by this researcher among the CUAC records from this time period; rather, evidence suggests one initial tip was given to Tenney in person by Rosalind Nofziger at an encounter in Canoga Park, at which point committee investigators dug deeper into Eisenberg’s union activities, which were publicly available.

experiment in adult education of sorts funded by an amalgam of labor unions. The PEC was led by Dorothy Healey, a longtime Communist Party member and activist who famously first made waves organizing agricultural worker strikes in the 1930s. And Tenney was absolutely incredulous when Eisenberg claimed to be unaware of Dorothy Healey's affiliation with the Communist Party.

### *Communism in the Classroom*

The thrust of Tenney's case against the two teachers came from a tip he had received from the mother of a former student of both Bettington and Eisenberg, Lyn Nofziger. Nofziger, who had graduated from Canoga Park High School in 1942 and would later serve as Governor Ronald Reagan's press secretary and as a White House advisor in the Nixon and Reagan administrations, had taken Senior Problems with Bettington and a journalism course taught by Eisenberg that produced the student newspaper. In a back-and-forth with committee members and with Richard Combs that can generously be described as extremely leading, he alleged that both teachers had pushed their communist ideologies on students and punished those who dared to oppose them. Here are just a few excerpts of their discussion of Blanche Bettington and her Senior Problems course. (Canoga Park hearing transcript, 1946, CUAC Collection)

Richard Combs. Did [Bettington] express herself for or against a controlled economy?

Lyn Nofziger: In general for a controlled economy.

Jack Tenney: Did she ever tell you Mr. Nofziger, that Russia was the only country ever expelled from the League of Nations for imperialist aggression?

LN: No.

RC: Did any of the students ever point out in the discussions that took place in the classroom that the capitalist system of government and free enterprise were responsible for the growth of the United States?

LN: Yes, it was pointed out a number of times.

RC: Did Mrs. Bettington express herself on the matter?

LN: Only that the laboring man was continually getting a dirty deal.

RC: In this country?

LN: In this country, yes. And that in the main I don't ever recall hearing her having said anything favorable about capitalism, no, I don't.

RC: Was the political discussion that took place in the class while you were a member of it a free, open, objective and unbiased discussion or was it slanted or pointed in any direction by your instructor, in your opinion?

LN: My instructor, Mrs. Bettington, was always on the side of the left. She argued one side with some of the kids, and some of us argued the other side. There was no impartiality there on her side.

Nofziger's younger sister Rosemary also testified, despite having not interacted with either teacher as a student at Canoga Park High School. She had, however, interacted with an investigator from the committee sometime before the hearing – by multiple accounts, Rosemary Nofziger had been instructed to enter the teachers' classrooms during the summer of 1946 and report on any suspicious findings. At the hearing, she alleged that she had seen copies of the

Communist Party's newspaper *The Daily Worker* tacked up on the walls of Eisenberg's classroom.

Eisenberg's account, however, paints the Nofzigers as being well known in the community as Nazi sympathizers and anti-Semitic, in addition to having something of a personal vendetta.<sup>6</sup> Eisenberg understood, though, that for her and for Blanche Bettington, being called before the Un-American Activities Committee was bigger than the two of them.

Among other allegations of anti-capitalism and disapproval of conservative media, one accusation Nofziger shared with the committee, which Tenney also chose to include in the committee's official report, is revealing of the underlying motives that drove the committee and other anti-communists. Nofziger told the committee that Bettington "continually emphasized the position of alleged racial minorities and declared...that such minorities were continually subjected to unfair prejudice and discrimination under the American system of government." (CUAC 3, 1947, p. 116)

The Los Angeles Times covered the hearing on its front page, complete with quotes from everyone who had testified against the teachers.

### *The Board of Education Investigates*

The day after the CUAC hearing, the chairman of the Los Angeles Board of Education, J. Paul Elliott, issued a statement largely in approval of the committee's actions, laden with histrionics. It read in part,

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<sup>6</sup> Eisenberg recalled, years later, that she and Lyn Nofziger had butted heads on more than a few occasions, including when she had given Lyn Nofziger a "B" in her journalism class, after which his mother Rosalind came to the school, insisted she give him an "A", and screamed at Eisenberg, at one point calling her a "dirty jew." (Goldin interview)

Any attempt to indoctrinate the students of our public schools in foreign ideologies, communism, or un-American doctrines is in strict defiance of the policy of the Los Angeles City Board of Education. Our administrators have made it clear to our personnel that the function of the public schools is to develop an appreciation of American doctrines and a respect for the superiority of our form of government and our democratic system of free enterprise over any other conflicting ideology or any other form of government. The Los Angeles City Board of Education will not tolerate a deviation from this policy.... It is high time that we eliminate any possibility of those who would extoll foreign ideologies as superior to our traditional American doctrines, and who would try to teach our children that our American life is inferior to that of some other country. (Elliott statement, 1946, Eisenberg Collection 1)

It is impossible to ignore the bizarreness of the Board president's statement – I don't think you could find many teachers who agree that the *function* of the public schools is to instill jingoist dogma in students. It really speaks to the moment in time. Post-war tensions with the Soviet Union were mounting; Harry Truman had recently fired his Commerce Secretary just for advocating a conciliatory approach with Russia; being seen as soft on communism was perceived as a career killer for an elected official or appointee. And it foreshadowed the position of the Board of Education on the prospect of protecting communist teachers.

In his statement, Elliott also announced an internal Board of Ed inquiry into the Canoga Park affair. The investigative panel included two assistant superintendents and two high school principals, and convened for the first time five days after Elliott's announcement, on October 15.<sup>7</sup> This was just the first of four days of hearings at the school, which began with Rosalind

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<sup>7</sup> Unsolicited historical context: Nine Nazi war criminals were hanged that day, October 15, 1946, upon the conclusion of the Nuremberg Trials

Nofziger begging the panel to fire Eisenberg, Bettington, and anyone else who included racial injustice in their teaching.

I don't believe in race prejudice at all. I am a very strong believer in race pride. If these teachers, instead of stressing prejudice of races to children of high school age, who normally have no prejudice at all, would stress race pride and pride of accomplishment that various races achieve, there would be no race prejudice....It is not only these two teachers who we feel are the greatest offenders, because it has been going on for a longer period of time, but it is other teachers in this school who are upholding them. We are taxpayers. We are parents. We are paying these teachers. Do we have to sit back and pay them to indoctrinate our children with ideas like that? I am asking you, do we have to? Do you think that is the proper way? (BOE investigation transcript, 1946, Eisenberg Collection 1)

Yet, in contrast to the Tenney Committee's limited guest list, the Board invited comments from anyone interested. And despite the early testimony against the teachers, over the course of four days some 72 individuals offered testimony to the investigating committee – roughly 50 of those who testified did so in favor of the teachers, 15 opposed, with a handful of testimonials basically neutral. That was in addition to the dozens of letters almost exclusively in support of the teachers received by the Board of Education after the Local 430 encouraged its membership to make their voices heard, with several alumni also joining the fray.

Irvin Kuenzli of the AFT sent a letter to the Los Angeles Board of Education on November 30, 1946, in which he emphatically supported Eisenberg and Bettinger, writing:

I was amazed that any responsible committee of a state legislature would bring severe charges of this type against public school teachers on such unfounded and flimsy rumors

and reports....we feel that the very act of bringing unsubstantiated charges of communism against teachers in the public schools constitutes a subversive and un-American practice of the worst kind. (Kuenzli letter, 1946, Eisenberg Collection 1)

*The Board of Ed Investigation Findings*

The Los Angeles Board of Education took no immediate action after the investigation, much to everyone's chagrin really. The teachers and their supporters hoped for a full-fledged exoneration and of course the anti-communists were angling for high profile firings. But after much hemming and hawing, the Board finally released a statement of its findings on December 30, 1946, broken up into four parts. (1) The Board did not find evidence to support the complaint that the teachers "imposed communistic doctrines upon students in their classes" or that Eisenberg had improperly influenced articles in the school paper. (2) They found that the teachers had taken partisan positions during class discussions, which the Board acknowledged could have influenced students toward their thinking, but that the teachers allowed students to develop their own opinions and encouraged them to evaluate sources critically. (3) They found evidence that "periodicals of almost every kind were permitted in the classrooms, and were not limited to the literature approved by" the Board of Education, including the Daily Worker. And (4) they confirmed that Eisenberg was on the board of directors of the People's Education Center, which was never really in question. The Board summarized,

While this inquiry has raised serious questions as to certain classroom practices engaged in by these teachers, it has also produced evidence of many outstanding accomplishments by them. It does not appear that disciplinary action would be justified or necessary to



correct the undesirable practices mentioned... (BOE investigation conclusions, 1946, LAUSD Collection)

The Board recommended further review of its policies surrounding the teaching of controversial issues.

### *CUAC Offers a Rebuttal*

In CUAC's third report, published in the summer of 1947, Tenney soundly rejected the findings of the Los Angeles Board of Education's internal investigation. He writes, "This committee is of the opinion that the Los Angeles Board of Education failed miserably in its responsibility to the youth of Los Angeles" (CUAC 3, 1947, p. 137). Tenney questioned the competence of Canoga Park High School principal Charles Nettles, and asserted that investigation was a task for professionals "trained in piercing smoke-screens," such as himself presumably.

After rehashing all of the evidence presented at the original hearing, Tenney summarized, Eisenberg and Bettington "slanted their teachings and discussions at Canoga Park High School for the purpose of indoctrinating the students with Communistic philosophy, disrespect for the Capitalist system of government of the United States and for the further purpose of building respect and reverence for the cruel dictatorship of Soviet Russia." (CUAC 3, 1947, p. 138)

The LA Times had run a few paragraphs on the teachers' exoneration by the Board of Ed on New Year's Eve of 1946, but when CUAC released its 1947 report the paper covered it as a press release, running word for word the above quote from the report. (LAT 03/25/1947)

Jack Tenney published a tome in 1947 titled "Red Fascism: Boring from Within...by the Subversive Forces of Communism," some 700-odd pages largely adapted from his writings in

the Un-American Activities Committee's biennial publications, in which he asserted that one of the committee's 28 major findings thus far was discovering and publicizing "the Canoga Park affair" (Tenney 1947, p. 642).<sup>8</sup>

The incident largely faded away, but that is not to say it was inconsequential. For one, in 1950 both Eisenberg and Bettington were unexpectedly and against their will reassigned away from Canoga Park. Given the opportunity to choose where she would be transferred, Eisenberg selected Fairfax High School, located nearer her home in Hollywood and among the majority of Los Angeles's Jewish population at the time, where she thought she might be received more welcomingly.

The broader effect of the Canoga Park affair, though, was in what it had demonstrated to the anti-communists in the Board of Education and the California Un-American Activities Committee, who now had their first meaningful reference point for any future endeavors they might undertake with teachers who threatened them with progressive ideals.

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<sup>8</sup> Another major committee finding he reported was that "the People's Education Center and the California Labor Schools are expanded Communist Party institutions for the purpose of disseminating Communist propaganda" (Tenney 1947, p. 641).

## THE CALIFORNIA UN-AMERICAN ACTIVITIES COMMITTEE

Knowing that their later efforts were successful, it is worthwhile to investigate why California's anti-communist crusaders failed to remove Eisenberg and Bettington from their teaching positions in 1946. To answer this question requires going back just a little bit further to the formation of CUAC and the rise of its celebrity chairman.

### *The Ballad of Jack Tenney*

The California Un-American Activities Committee was officially formed in 1941 as a spinoff of an earlier committee investigating communist influence in the State Relief Administration.<sup>9</sup> Upon its founding, Jack Tenney, then a member of the State Assembly from Los Angeles, was selected to serve as chairman, and Richard Combs, an attorney from the San Joaquin Valley town of Visalia was hired as its chief counsel. The Tenney Committee was one of a handful of "little Dies" committees, so named for their resemblance to the congressional predecessor to HUAC chaired by Texas congressman Martin Dies.<sup>10</sup>

Before he adopted the mantle of anti-communism, Jack Tenney was a songwriter and union leader. His greatest hit was *Mexicali Rose*, which he wrote with the lyricist Helen Stone in 1923; the song was famously performed by Bing Crosby, reaching number three on the charts in 1938, and later by Gene Autry in the film of the same name in 1939, as Tenney was experiencing his rise to power in the California Assembly.

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<sup>9</sup> This predecessor committee was chaired by future Los Angeles mayor Sam Yorty.

<sup>10</sup> In addition to California's, the collection included anticommunist investigative committees established in Illinois, Massachusetts, Michigan, Ohio, New Jersey, New York, and Washington state (Heale 1998). A number of southern states formed similar committees and executive agencies in the 1950s and 60s, but these were motivated less by anti-communism and more by the Civil Rights Movement and the termination of legal segregation (Katagiri 2001).

Anti-communism was personal for Jack Tenney. In 1937, the members of the Los Angeles chapter of the Songwriters Union elected Tenney to be their vice president, and then their president in 1938. Tenney's union presidency was extremely short-lived, however, as his leadership was challenged, as he recalls, by an ardent band of Communist Party members in 1939.

### *Legislative Investigation comes to California*

In the first few years of CUAC's operation, Tenney and other committee members deposed hundreds of witnesses to testify on a motley list of subjects that included communist influence in organized labor (including in the Songwriters' Local 47), the structure and organization of the Communist Party in California, the German American Bund, a highly publicized murder case involving merchant seamen and union officers being charged and convicted of murdering a ship's chief engineer, and a number of lesser progressive groups labeled communist fronts by the committee.

Most of the committee's activities followed a general pattern: (1) accuse a group or individual of disloyalty, (2) corroborate these accusations at public hearings characterized by antagonistic interrogation of "hostile" witnesses and chummy leading questions for "friendly" witnesses, and (3) then report those "findings" to the press.

Leaders of the California Un-American Activities Committee touted their committee's ability to do things that law enforcement and the judiciary could not. In its very first report, Jack Tenney boasted,

The committee, empowered to subpoena [sic] witnesses and to examine them under oath, not being bound by the rules of evidence and armed with the power to punish for

contempt through the initiation of proper criminal proceedings, and for perjury in the event that crime might be established, cuts through the technical restriction of other investigative units which are primarily law-enforcing in character rather than fact-finding. (CUAC 1, 1943, p. 8)

Unbound by the constitutional protections afforded suspects in criminal investigations, CUAC used the legislative powers of investigation to compel witnesses to divulge information about themselves and others that could make them targets for informal economic sanctions or at the very least stigmatization in their communities during a time when communist sympathies were conflated with anti-Americanism.

### *WWII Period*

The work of the California Un-American Activities Committee was naturally impacted by the happenings of the Second World War. After the Japanese attack on Pearl Harbor, the committee diverted some of its attention toward investigating potential collusion between Japan and Japanese-Americans and more generally on anti-American sentiments held by those of Japanese descent living in the United States. During this time CUAC members were complicit in fanning the flames of an anti-Japanese nativist movement born of enduring and deep-seated prejudice against Asians in California that dated back to the Gold Rush era. At one point CUAC advocated the permanent relocation of all Japanese interned across the country, arguing that deporting those who had experienced the freedoms of the United States would have a positive effect on educating the Japanese about the innate goodness of their enemy.

Throughout the wartime period, CUAC continued to investigate rumors of sedition among Japanese internees – rumors that were often propagated by the San Francisco Examiner

and other outlets operated by William Randolph Hearst. In its early years, CUAC benefited greatly from positive coverage provided by Hearst and regularly praised the work of his publications in their biennial reports.

Another significant way CUAC's work was affected by World War II was in how it navigated its antagonism toward Russia and the Soviet Union. The Soviet Union and Nazi Germany famously signed a non-aggression pact in August of 1939, making it easy for *most* Americans to view both with varying degrees of antipathy. When Hitler's forces invaded the Soviet Union in June of 1941, the interests of the U.S.S.R. rather suddenly aligned with those of the other members of the Allied forces, including the United Kingdom and the United States. During this time CUAC and the American anti-communist movement grappled with the contradiction of standing in opposition to the Soviet brand of communism they so despised while voicing support for the U.S. and its allies in the war effort.

Illustrating this contradiction, in an address on law enforcement that included talk of the dangers of communism in America, delivered to the 52nd Annual Meeting of the International Association of Chiefs of Police in December of 1945, anti-communism's single greatest booster J. Edgar Hoover said this:

I do not for one minute detract from the heroic fight Russia waged against the invading Nazi hordes, to emerge as one of the great powers of the World. We must not let the antics of the American Communist prejudice us against this great nation which has the right to any form of government she desires, nor must we judge the great Russian people by the lunatic fringe which represents the great majority of American Communists.

(Tenney 1947, p. 649)

It was not long after the Allied victory, however, that tensions surrounding the dividing of Germany between the Soviet Union and the rest of the Allies cemented the two nations' tortured relationship for decades.<sup>11</sup> Two years after defending Russia's "right to any form of government she desires," Hoover was warning the House Un-American Activities Committee of the destruction of "American Democracy" and free enterprise and "the creation of a 'Soviet of the United States.'" Hoover declared, "There is no doubt as to where a real Communist's loyalty rests. Their allegiance is to Russia, not the United States." (Schrecker 2002, p. 132)

After the war, as public opposition to the continued internment of Japanese-Americans grew and the Supreme Court ordered the release of those interned, CUAC rhetoric on the threat of Japanese insurrection cooled, and the committee returned to investigating communism almost exclusively, focusing on communist influence in labor unions, particularly the political action committee of the CIO, and communism in the motion picture industry.

## **AN ANTI-COMMUNIST EYE ON EDUCATION**

It was not until after the war that CUAC began devoting more of its resources to investigating the links between communism and education, a shift seen outside of California as well. In his address to the House Un-American Activities Committee in March of 1947, J. Edgar Hoover offered this chilling forecast for America:

I would have no fears if more Americans possessed the zeal, the fervor, the persistence and the industry to learn about this menace of Red Fascism. I do fear for the liberal and

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<sup>11</sup> This is not to say, however, that there were not those in the United States who admired what they saw of communism in the Soviet Union. What they saw, as it turned out, was largely propaganda, and as the atrocities perpetrated by Stalin and the Politburo became apparent I think it would be fair to say communists in the United States became less enthusiastic about trying to emulate the Soviet model and American *anti*-communists became more enthusiastic about tying all communism to Soviet atrocities.

progressive who has been hoodwinked and duped into joining hands with the Communists. I confess to a real apprehension so long as Communists are able to secure ministers of the gospel to promote their evil work and espouse a cause that is alien to the religion of Christ and Judaism. I do fear so long as school boards and parents tolerate conditions whereby Communists and fellow travelers under the guise of academic freedom can teach our youth a way of life that eventually will destroy the sanctity of the home, that undermines faith in God, that causes them to scorn respect for constituted authority and sabotage our revered Constitution. (Tenney 1947, p. 664)

For CUAC, their concerns about communism in education manifested in two somewhat disparate lines of inquiry – one on ostensibly communist-run adult education schools, including the People’s Education Center, on the board of which Frances Eisenberg was a member, and its northern kin the California Labor School, and another on California public schools and their infiltration by communist-sympathizing educators and administrators.

Investigating these adult education centers that were alleged to be operated by communists, based on the activities of one or two members of the organizations’ boards of directors, CUAC interrogated several university faculty members whose names had been used in literature put out by the People’s Education Center and the California Labor School and who had given lectures on various subjects through these schools. Tenney and Combs would routinely subpoena these instructors and force them to denounce communism in no uncertain terms at public committee hearings. If they did not, or refused to testify about communism, they were branded communists or fellow travelers.

On the public school system front, one of CUAC’s first investigations was of course the Canoga Park affair, in October of 1946. But if Tenney’s failure to remove Eisenberg and



Bettington left him humbled, he certainly didn't show it. Undeterred by Canoga Park, CUAC continued to involve themselves in the goings on of California's public high schools.

In early 1947, the committee held hearings in the small, northern California town of Chico to investigate the inclusion of a number of supposedly progressive sex education books as part of a curriculum adopted the previous fall. Tenney concluded that the books were pornographic and followed the Communist Party line of destroying the moral fiber of American youth, saying, "Discussions of sex along these lines have a tendency to break down marriage and the family as a unit, so that foundations can be built for the coming revolution." (Sacramento Bee 2/27/1947) Most media outlets were quick to denounce the hearings, with several playing on the idea of Tenney finding sex to be un-American.

The anti-communists in California's legislature also fought to keep schools from using the *Building America* series developed by a curriculum specialist at Stanford University named Paul Hanna in 1947. First published in 1935, Hanna's series was intended to stimulate student discussion of the socioeconomic and political problems facing the United States. Monthly issues each focused on a different topic designed to encourage students' critical thinking. The critical tone of the *Building America* series made it a natural target for elected champions of Americana, who did what they could to repress it.

An LA Times editorial on the *Building America* kerfuffle read in part, "The best that can be said for those who favor 'Building America' as supplementary texts is that in their zeal for a fair representation of American history, of bad along with the good, they have leaned too far in the other direction." (LAT 02/27/1948)

And the Tenney Committee continued chasing headlines in this way, jumping from one scandal to the next. The committee had gained a reputation not as a substantive effort to combat subversion, but as a platform for Jack Tenney to do performative politics.

*Tenney v. Brandhove*

Indeed, it was under Tenney's chairmanship that he and CUAC became party to a U.S. Supreme Court case in which the limits of legislative investigation were tested. In 1949, CUAC deposed an ally of a liberal candidate for San Francisco mayor who subsequently sued the committee for abusing their powers of investigation for political reprisal. In its *Tenney v. Brandhove* decision, the Court codified the longstanding principle of legislative immunity – that “legislators are immune from legal responsibility for their intra-legislative statements and activities.” (341 US 367, 1951, p. 379) For the majority Justice Frankfurter wrote,

In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed. Courts are not the place for such controversies. Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses. The courts should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province. To find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive. (p. 378)

This being the first time the Court had interpreted Section 1983 of the United States Code, the precedent set by the *Tenney* decision is one of CUAC's most long-standing impacts. The first hint of how far the justices went beyond the almost minor question about suing legislators can be

seen in the lone dissenting opinion from Justice Douglas. Referring specifically to the Brandhove incident, Douglas wrote,

If a committee departs so far from its domain to deprive a citizen of a right protected by the Constitution, I can think of no reason why it should be immune... we are apparently holding today that the actions of those committees have no limits in the eyes of the law... we now hold that no matter the extremes to which a legislative committee may go it is not answerable to an injured party. (p. 383)

Douglas insisted that immunity must end when a committee oversteps its power and infringes on a person's civil rights, "[bringing] down on an individual the whole weight of government for an illegal or corrupt purpose."<sup>12</sup> (p. 383)

*Tenney* demonstrated that legislative investigation can be a powerful, and *legal* tool for political retribution. It can be used to (somewhat) subtly imply impropriety through excessive hearings and unfounded accusations, as in so many Benghazi investigations, or it can be used to overtly attack a political foe, with the only potential consequences being relatively far-removed electoral ones.

### *Requiem for a Tenney*

Jack Tenney proposed 17 new anti-communist laws in January of 1949, including loyalty oaths for lawyers, doctors, and college faculty, all of which failed to garner support in the legislature. In the committee's 5th report, published in June of 1949, Tenney listed some 275 of the committee's detractors, including influential writers, actors, clergymen, academics, activists,

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<sup>12</sup> Future courts would more than justify Douglas's concerns. A quick look at how *Tenney* has been cited by later courts demonstrates judges' willingness to uphold the principle of absolute immunity for legislators working under the guise of their parliamentary duties (See *Bogan v. Scott-Harris* 1998, *Camacho v. Samaniego* 1997, and *Long v. Bristol Township* 2012, among others).

and politicians. The list was widely reported by news media, elicited rebuttals from a number of those named, and did not endear Tenney to his colleagues or the majority of Angelenos.

Publishing the list of CUAC detractors capped a string of failed publicity stunts, after which Tenney and his committee saw much less favorable coverage by media in California and nationally, leading Tenney to lash out at the outlets he saw as hindering his cause, which had a predictable cascading effect on the media's treatment of him. This also happened to coincide with the Brandhove incident and Tenney's 1949 campaign for mayor of Los Angeles, in which he came in fifth place.

Shortly thereafter, in a reorganization of the committee, Tenney lost his CUAC chairmanship to committee member Hugh Burns. The public had soured on Tenney, who continued to grow more reactionary and more openly racist and anti-Semitic. He ran unsuccessfully for congress in 1952, concurrently running for vice president on the Christian National Party ticket. Tenney then lost the Republican primary for his State Senate seat in 1954 and, except for yet another failed run for congress in 1962, he mostly faded away.

## **THE BURNS COMMITTEE**

The 1950s ushered in a new era for the California Un-American Activities Committee. Much unlike Jack Tenney, Hugh Burns shied away from the spotlight. He held far fewer public hearings, authored fewer proposals for anti-communist legislation, and focused the committee's energies on more covert operations, so to speak, launching less ostentatious but by no means less effective attacks on academic freedom and civil liberties more broadly.

*The Levering Oath*

The Regents of the University of California became embroiled in a dispute over a new loyalty oath in 1950, one that Governor Earl Warren had openly opposed for singling out university employees and because the State Constitution already required public employees to sign an oath of loyalty to the state and federal constitutions. Though unpopular among the University of California's faculty – hundreds refused to sign the new oath initially, though opposition waned significantly as the U.S. entered the Korean War – the idea behind an oath specifically targeted at communists had support among the California electorate, an electorate that Warren would need during the 1950 gubernatorial race.

Warren proposed to the legislature an oath that would apply to *all* public employees. It was sponsored by Harold Levering in the State Assembly and Hugh Burns in the State Senate, passed into law easily, and it came to be known as the Levering Oath.<sup>13</sup> In addition to parroting the existing oath's boilerplate pledge to uphold the constitutions of the state and nation, the oath contained the following paragraph:

And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means... (CA Gov. Code §§ 3100, 1950)

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<sup>13</sup> Earl Warren, for what it's worth, was reelected by a landslide in 1950 against Democrat James Roosevelt, winning nearly 65 percent of the vote and (for the last time ever) a majority of every single county.

Loyalty oaths have been the subject of many theses and scholarly works over the years, and for good reason. The Levering Oath was a momentous success for anti-communists in California that angered many public employees, who resented the encroachment on their privacy and, for teachers, academic freedom. But it was also seen as largely toothless, despite the threat of perjury for those who signed falsely. A Pasadena superintendent, at a public discussion of the Levering Oath in November of 1950, was quoted by the LA Times as saying, “We won’t find Communists through administration of the oath. The best way to find a Communist is to let the experts do it.” (LAT 11/15/1950)

Still, in his first year at the helm of the California Un-American Activities Committee, Hugh Burns had accomplished with the loyalty oath a feat that Jack Tenney had been pushing for nearly a decade. The Levering Oath was challenged and upheld as constitutional by the California Supreme Court in *Pockman v. Leonard* (1952), but without an enforcement mechanism beyond firing non-signers, the impact was by and large symbolic. This is not to detract from the message sent by oath resisters and the very real effects felt by those who were fired for refusing to sign the oath, social and economic effects, but those effects were essentially limited to a self-selected cohort. To exact the severity of punishment that the anti-communist crusaders desired to wield against progressive Los Angeles teachers, they would need to look beyond loyalty oaths, and so that’s what this story does as well.

### *Higher Education*

Riding on the momentum of the loyalty oath passage, in the first half of 1951, CUAC established an alliance with colleges and universities across the state – Burns and Combs claimed it included *all* of the state’s public colleges and universities and many of the private ones as well,

though some of the schools disputed this account. The arrangement involved each college or university appointing a liaison that would consult with CUAC on personnel matters, allowing CUAC to vet potential hirees and current faculty and administrators for communist ties, and ostensibly keep tabs on communist activity at the school.

The full and true nature of the arrangement between CUAC and California's institutions of higher education is hazy, but there is considerable evidence to support the contention that CUAC was actively influencing the employment procedures and practices of public colleges and universities across the state. Asked about the college liaison program in March of 1952, Burns remarked, "Communists, since 1947, have greatly accelerated their underground work in schools and we hope to combat this as it shows up and before it reaches epidemic proportions." (LAT 03/25/1952)

It was an effort that undoubtedly had a chilling effect on the hiring of progressive faculty or staffers with histories of union activism – the threat of being outed publicly by CUAC for hiring an alleged communist or fellow-traveler was hanging over academic departments like the Sword of Damocles.<sup>14</sup>

## **A LEADER EMERGES**

Jack Tenney was an agitator, a rabble-rouser. Wherever he went, he left a wake of destruction. Hugh Burns was the antithesis of Tenney's worst excesses. Later in life, Tenney himself recounted, "I do not remember hearing an unkind word said of [Hugh Burns]. His popularity was not confined to any particular group, class or period of time. Everyone liked to

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<sup>14</sup> It is known that the cooperative agreement with the University of California lasted for several years before Robert Sproul was replaced as president of the UC system by Clark Kerr, who was generally unsympathetic to the anti-communist cause and would stay a thorn in CUAC's side for many years.

believe that he was a special friend, so that those who knew him casually later came to believe that they knew him intimately.” (Tenney oral history, 1969, p. 822) The same could not have been said about Tenney. Jack Tenney was the embodiment of the proverb, *if all you have is a hammer, everything looks like a nail*. Jack Tenney was a human hammer.

A maxim attributed to philosopher Lao Tzu goes, “A leader is best when people barely know he exists, when his work is done, his aim fulfilled, they will say: we did it ourselves.” Burns was this leader. Burns understood the power of persuasion and in delegating responsibility, particularly to his chief counsel Richard Combs. Burns and Combs developed the state’s new loyalty oath and let Harold Levering and Frank Luckel take the credit. Burns got the state’s colleges and universities to agree to let CUAC investigators probe personnel files. Under Burns’s leadership, CUAC went from maligned mouthpiece for an anti-communist bombast to an effective tool for limiting the capacity of California progressives to be heard and effect change.

By insisting on holding widely publicized hearings so that he himself could receive the attention he so craved, Jack Tenney had inadvertently given a public forum to his detractors, and in himself he had gifted progressives with an enemy to converge around. Burns took away the soapbox and he developed clever procedures to limit progressive organizing by depriving them of their jobs, cutting them off from both necessary income and the unions that were driving efforts that anti-communists opposed.

Burns was helped, of course, by a wider conservative movement coinciding with the shifting tides of the Cold War, which were then manifesting as a very *hot* war in Korea. But it was undoubtedly his leadership of the California Un-American Activities Committee that enabled anti-communism to flourish in California throughout the 1950s.



## ***ADLER and THE BOARD***

By 1952, the California Un-American Activities Committee had largely recovered from the turmoil surrounding its former chair, who had nearly hobbled the committee with his attempts to take down the committee's detractors, which had only encouraged scrutiny by civil rights activists. The committee's activities in the years immediately following Tenney's departure were considerably less overt, and all the more effective for it. Far from the front line, Burns and Combs directed the charge against California's leftists from backstage, maintaining a behind-the-scenes presence in support of state and local efforts.

The most concerted of those local anti-communist efforts was beginning to unfold in Los Angeles, where the Board of Education had, in late 1951, solicited the advice of Los Angeles County Counsel Harold Kennedy on the legality of barring communists from employment by the Board, in any capacity but with the obvious intent of restricting teachers. The failures of the Canoga Park incident were undoubtedly on their minds as they devised a plan to systematically address the progressive movement as it continued to manifest in organized labor, especially among the leadership of the Los Angeles Federation of Teachers.

Three thousand miles away, the New York Board of Education was running the same playbook. The state had passed the Feinberg Law in 1949, providing for the disqualification and removal of teachers and other public school employees who were members of organizations deemed subversive by the New York Board of Regents. The law's preamble referred specifically to the Communist Party as advocating violent overthrow of the government. The Feinberg Law was quickly challenged in court – the case, *Adler v. Board of Education of the City of New York*, reached the U.S. Supreme Court on January 3rd, 1952, and two months later the Court decided six-to-three in favor of the anti-communist law and its supporters.

In a major blow to academic freedom, the court ruled that denying teachers the “privilege” of working for the school system based on their beliefs and associations did not deprive them their First Amendment rights to freedom of speech and assembly, reasoning that teachers could retain those rights by seeking employment elsewhere. Writing for the majority, Justice Minton expounds on recurring anti-communist arguments against academic freedom for progressive educators,

A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted. One’s associates, past and present, as well as one’s conduct, may properly be considered in determining fitness and loyalty. From time immemorial, one’s reputation has been determined in part by the company he keeps. In the employment of officials and teachers of the school system, the state may very properly inquire into the company they keep, and we know of no rule, constitutional or otherwise, that prevents the state, when determining the fitness and loyalty of such persons, from considering the organizations and persons with whom they associate. (342 US 485, 1952, p. 493)

In his dissent, Justice Douglas wrote of his concern for eroding civil liberties. “The Constitution guarantees freedom of thought and expression to everyone in our society. All are entitled to it; and none needs it more than the teacher.”<sup>15</sup> (p. 508) Douglas painted a prescient picture of the future, given the consequences of *Adler*. He wrote,

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<sup>15</sup> Justice Black concurred with Douglas’s dissent. Justice Frankfurter’s dissent, it should be noted, was based entirely on the plaintiff’s standing and the case’s ripeness. He argued that four of the eight plaintiffs had no standing

What happens under this law is typical of what happens in a police state. Teachers are under constant surveillance; their pasts are combed for signs of disloyalty; their utterances are watched for clues to dangerous thoughts. A pall is cast over the classrooms. There can be no real academic freedom in that environment. Where suspicion fills the air and holds scholars in line for fear of their jobs, there can be no exercise of the free intellect. Supineness and dogmatism take the place of inquiry. (p. 510)

If anything, Justice Douglas's prediction about the chilling effect of the *Adler* decision was understated, because ultimately it wasn't just currently employed teachers and administrators who would feel the effects – it is impossible to know how many people were turned off from becoming career educators or merely joining a progressive teacher's union because of the nebulous threats to their constitutional freedoms.

## **LOS ANGELES, SUMMER 1952**

Shortly after the *Adler* decision was handed down, Los Angeles County Counsel Harold Kennedy delivered his response to the LA Board of Education's request for guidance on firing alleged communists working in Los Angeles public schools. In a letter dated July 8th, 1952, Kennedy informed the Board they would be within their legal rights to adopt a rule preventing active members of the Communist Party from obtaining or retaining employment in Los Angeles public schools.

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– two were “taxpayers” whose standing hinged on the potential of the Feinberg Law to waste taxpayer resources and two were parents of students whose legal interest in the case he deemed “tenuous.” He wrote, “The claim does not approach in immediacy or directness or solidity that which our whole process of constitutional adjudication has deemed a necessary condition to the Court's settlement of constitutional issues.” (342 US 485, 1952, p. 503) In answer to Frankfurter's doubts about ripeness, Douglas writes, “The very threat of such a procedure is certain to raise havoc with academic freedom.” (p. 509)

Kennedy recommended *against* adopting a rule explicitly aimed at *former* members of the CP, but advised a workaround such that the Board could require employees to declare under oath whether they had been members of the CP in the past and that the Board could dismiss any employee who refuses to comply with such an inquiry. The county counsel further added that the Board could adopt a rule requiring employees to answer questions related to their membership in the Communist Party posed to them by an anti-communist legislative committee, should such a committee subpoena them. In concluding the letter, Kennedy opines that “the suggested rules are reasonable because of the gravity of evil to be corrected and the reasonableness of the means suggested to assist in correcting the evil.” (Kennedy letter, 1952, LAUSD Collection)

Indeed, it was with the full backing of the Los Angeles County Counsel’s office that the Board of Education was successful in its efforts to develop the anti-communist scheme that ultimately led to hundreds of teachers being fired or otherwise denied employment in Los Angeles public schools. At the end of 20-odd pages of legal advice, Kennedy ends his letter to the Board of Education with an endorsement:

This office has had experience in dealing with the evils of Communism since August of 1947 when the County of Los Angeles adopted its loyalty oath program. We have found that the best defense against this enemy is a strong offense. We therefore heartily concur with and commend the Board of Education for giving consideration to a program which is aimed at the prevention of the indoctrination of the minds of the pupils in the public school system with the treachery and deceitful purpose of undermining the patriotism for and the belief in the form of government guaranteed by the Constitution of the United States. In the event that the Board of Education desires to go forward with this program, this office will fully cooperate in the preparation of any necessary orders in the

representation of the Board of Education in any litigation which might follow, or in the preparation of any necessary legislation to achieve these objectives. (Kennedy letter, 1952, LAUSD Collection)

The stage was thus set for a showdown between the Board and its progressive employees, and the Board wasted little time in testing the limits of the legal powers Kennedy purported they possessed.

In the August 1952 edition of the LA Teacher, the newsletter of the independent Los Angeles Federation of Teachers, Frances Eisenberg warned her union of what was to come. “Implementation of [Kennedy’s] proposals would establish second-class citizenship for all teachers in Los Angeles and an unprecedented era of domination and control of teachers’ speech, associations, and activities.” (LA Teacher, Aug. 1952, Eisenberg Collection 2)

Eisenberg and her union colleagues argued that teachers could be dismissed using laws that already existed in 1952; a teacher could be terminated for immoral or unprofessional conduct, for advocating acts of criminal syndicalism, for dishonesty, incompetency, or evident unfitness for service, and for advocating or teaching communism with intent to indoctrinate students. Any new laws or Board regulations were further evidence to progressives that the Board was not operating in good faith, that their qualms were not with the supposed threat communism posed to peaceful governance, rather their problems revolved around the issues that were actually championed by communists and non-communists alike in the former Local 430, including racial integration of schools, hiring more black teachers, reducing class sizes, and strengthening teacher tenure laws.

*Board of Ed Response*

Weeks after Frank Wilkinson's ambush at a Housing Authority hearing over the proposed Elysian Heights development, the Los Angeles City Board of Education gathered for its regular weekly meeting at the Board's administrative offices, located off the Hollywood Freeway on the outskirts of Chinatown. Superintendent Alexander Stoddard presented a detailed proposal based on the county counsel's recommendations, borrowing heavily from New York's civil service law that had effectively received a stamp of approval from the U.S. Supreme Court in its *Adler* decision.

In its preface, the proposal presented by Stoddard at the meeting emphasized the threat of global communism and "a world-wide revolutionary movement to establish a totalitarian dictatorship based upon force and power rather than upon law" (Board of Ed meeting minutes, Sep. 1952, LAUSD Collection, p. 3). The proposal states,

One of the objectives of the world communism movement is to place its members in local government positions and in the public school system. If this objective is successful, propaganda can be disseminated by the members of these organizations among public school pupils by those members who would have the opportunity to teach them and to whom, as teachers, they would look for guidance, authority, and leadership (p. 5).

The proposal effected the changes outlined in Kennedy's July letter, namely that (1) current members of the Communist Party could not be employed by the Board of Education, (2) employees who had been members of the Communist Party within one year prior to the new rules being adopted would have to submit an affidavit to the Board affirming they'd terminated their party membership, and, (3) if called to testify under oath before a congressional or state legislative committee or before the Board of Education itself about their communist ties, employees must answer such questions affirmatively and not refuse to answer questions about

their political inclinations or activism. Anyone who violated these rules would be guilty of unprofessional conduct, their employment subject to termination.

Board President Paul Burke made some comments before the official vote, one in particular that echoed a fear Justice Black mentioned in his *Adler* dissent. Burke said, “Every teacher, administrator, and other school employee should be reminded of the duty of every loyal citizen to be alert to detect evidences of subversive conduct and disloyalty wherever they may appear.” (p. 10)

The new guidelines were unanimously adopted at the meeting on September 22nd.

## **FRANK WILKINSON and PUBLIC HOUSING IN LA**

The Hall of Justice, located at the corner of Temple and Broadway downtown Los Angeles, is a classic Beaux-Arts cube, constructed in 1925, that alongside City Hall serves as the foundation for the Civic Center district of downtown Los Angeles; it is still used today by various county agencies, though no longer as a courthouse as it was in the early 1950s.

It was already 90 degrees by the time Frank Wilkinson arrived at the Hall of Justice on the morning of August 29, 1952. He was scheduled to testify in what should have been a routine condemnation hearing for land that was slated to become a large public housing project. In his role as the information director of the Housing Authority of the City of Los Angeles he was often tasked with testifying on behalf of the Housing Authority in court against lawsuits threatening the city's proposed housing projects.

### **THE BATTLE OF CHAVEZ RAVINE**

Between December 1950 and the summer of 1952, the City of Los Angeles had condemned and reclaimed some 28 acres of Chavez Ravine for a public housing project to be called Elysian Park Heights. Chavez Ravine was a low-income community with several hundred Mexican American families living in small single- and multi-family homes before the city of Los Angeles bought the land using funds provided by the National Housing Act of 1949 through the process of eminent domain, often at rates far below fair market prices, and forced residents to vacate their homes.

The initial plan for Elysian Park Heights included constructing two dozen 13-story apartment buildings, with a goal of housing 17,000 residents, in addition to several churches and schools, and a large auditorium. Opposition to the project was fierce. Some opposed it for the



many forced evictions of the area's current inhabitants, which they considered unnecessary – they argued that existing homes could have been retrofitted to conform to new building codes, and regardless, the area was large enough to accommodate more housing if need be, albeit at a much smaller scale than the planned project. Opposition also came from the project's architects, who, upon visiting the site, found the descriptions of Chavez Ravine as a ghetto in utter disrepair to be exaggerated. (Laslett 2015, p. 65)

Frank Wilkinson, however, believed in the project, he believed the roughly 3,800 residents of Chavez Ravine would be better off in the new grand apartment structures that would be built on the rubble of their razed homes, and he had walked the entire community, door to door, and personally promised the families that they would be rehomed among the new housing units.<sup>16</sup>

Yet others opposed the project for the negative effects they imagined it would have on neighboring communities and their property values, and they used the bogeyman of public housing to stoke race and class-based fears. They needed only to point to large high-rise housing projects in New York, Chicago, and St. Louis that were ostensibly built to revitalize slums, but that had become even more dangerous due to poor planning and neglect, not to mention flawed assumptions about social cohesion and housing design that have since been laid bare (see Goetz 2013, 2018).<sup>17</sup>

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<sup>16</sup> Wilkinson's assuredness in this stance is somewhat puzzling given (1) construction of the Elysian Park Heights project was estimated to take two years, putting all of the residents in years of housing limbo, and (2) many Chavez Ravine residents would have faced significant hurdles in securing housing – public *or* private. Homeowners and non-U.S. citizens were disqualified from applying for public housing, and tacit racial covenants restricted Mexicans and Mexican-Americans from living in various neighborhoods across the city. (Laslett 2015, p. 66)

<sup>17</sup> If I may admit one of my biases here, I consider myself such an extreme YIMBY that I support almost any proposal to build more housing – be it public or private, beautiful or ugly, expensive or cheap, whether it has too much parking or too little, I tend to believe more housing is needed to prevent homelessness and mitigate housing insecurity. But *even I* must acknowledge that the plan to raze an existing working class neighborhood of single-family homes and replace it with high-rise apartment buildings does not constitute good planning or policy.

Perhaps unsurprisingly, it was the resistance of these primarily white property owners and developers that ultimately doomed the Elysian Park Heights project. In early 1952, they banded together to sue the Housing Authority to prevent the agency from breaking ground on the Elysian Park Heights project.

## **FRANK WILKINSON, GLOBAL CITIZEN**

Frank Wilkinson could hardly have made a more significant turnaround from his conservative, religious upbringing. He was raised by a devout Methodist physician, a man of both means and political influence, in Beverly Hills, CA. At Beverly Hills High School, Wilkinson ran the Youth for Herbert Hoover club, in support of the famously prohibitionist president, and even through his tenure at UCLA, where the closest he got to politics was unsuccessfully attempting to rig the student body president elections in his favor, he told his family and friends that his plan was to enter the seminary after graduating.

In 1936, a post-graduation excursion took Wilkinson from Chicago to New York, and then through North Africa, the Middle East, and Europe. “Maxwell Street,” in Chicago, he says, “was the beginning of my new world, my new life.” (Wilkinson oral history, 1992, p. 341) Years into the Great Depression, Wilkinson was discovering poverty for the first time. He abruptly turned his would-be extended vacation into an education on how the other half lives.

Wilkinson came back from his travels an atheist and champion of the underclass. A college friend hooked him up with a manual labor job at his pipe factory, where Frank was the only caucasian among an otherwise Black and Latino crew, stacking and loading greasy drilling pipes all day. Wilkinson brought Black friends with him to Sunday service at the Hollywood

Methodist Church; he opted for jail time over paying a speeding ticket; and when employees of the *Hollywood Citizen-News* newspaper went on strike in 1938, Frank joined the picket line.

Frank's father and family were surprisingly accepting of his transformation. Dr. Wilkinson introduced his son to a Los Angeles County Supervisor, marking the beginning of Frank's brief foray into lecturing. For three years Wilkinson delivered variations of his lecture, "The Social Conditions of the Lower-Income Classes in North Africa, the Near East, and Europe," to fraternal organizations and social clubs across Southern California. It was at one of these discussions that Wilkinson caught the attention of the L.A. Citizens' Housing Council and its director, Monsignor Thomas O'Dwyer of the Catholic Archdiocese of Los Angeles.

O'Dwyer hired Wilkinson to advocate on behalf of the Housing Council in 1939 and for three years he was a thorn in the side of the LA Housing Authority director, Howard Holtzendorff. Holtzendorff simply didn't have the energy to compete with Frank's vigorous advocacy of more public housing, so he hired Wilkinson and gave him the authority he needed to effect the kind of changes in the city's housing policies he so fiercely advocated.<sup>18</sup>

### *Party People*

It was around the time Wilkinson joined the Housing Authority in 1942 that he and Jean also became members of the Communist Party. The two were surrounded by others who felt the way they did about the biggest problems facing the nation. They saw the policy failures that led to racial gaps in income, housing, and education, and the group that was most outspoken about these issues was the Communist Party USA. In 1942, joining the Communist Party was even

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<sup>18</sup> According to Robert Sherill's biography of Wilkinson, Holtzendorff sent an emissary to the picket line of the Hacienda Heights housing project, where Wilkinson was protesting its segregation with the Citizens Housing Council, and he was told "Since you like niggers so much, maybe you'd like to manage the project," though the anecdote has an apocryphal quality to it, I think. (Sherill 2005, p. 68)

beginning to look politically safer given the burgeoning alliance between the United States and the Soviet Union as they took on Nazi Germany together. Indeed, there was a full-fledged pro-Soviet propaganda campaign within the U.S. that softened the general public to the scrappy underdog that was holding off Hitler on the Eastern Front.

The Communist Party had lost much of its membership beginning in 1939 during the German-Soviet non-aggression pact period, but began rebuilding in 1941, peaking somewhere around 1947 with ~75,000 members nationwide. The Wilkinsons joined in this wartime wave after being courted by friends in the party Frank described as, “people in high places in Los Angeles, in the community, in churches, in trade unions,” people who were “committed to the highest traditions of American patriotism and respect for our own country, working for social justice in our country, for a better world generally.” He added, “none of them ever did anything illegal.” (Wilkinson oral history, 1992, p. 723)

At the Housing Authority, Wilkinson championed new housing projects and instituted the as yet radical policy of racially integrated public housing in LA, a change he felt empowered to achieve with his *friends in high places* cheering him on privately. Los Angeles faced an extreme housing shortage during and particularly after World War II – southern Blacks who were able to escape Jim Crow had migrated to the city for its manufacturing jobs, thousands of interned Japanese-Americans returned after the detention camps were closed to find their homes had been sold off, and tens of thousands of war veterans were also fighting for the scarce housing stock. The Watts neighborhood in southern Los Angeles was the site of much high density development during this time, including the city’s first large public housing project that, thanks to Wilkinson, would be racially integrated. In fact, the FBI’s decades-long dossier on Frank Wilkinson begins with his integrating the Watts housing project. (Sherrill 2005)

Things continued in this way without much incident for the next decade. Wilkinson rose through the ranks of the Housing Authority, championed new housing projects, making them as integrated as he could given the outsized needs of the Black community, and by 1952 he had been promoted to the director of information position, putting him just under Director Holtzendorff in the Housing Authority's hierarchy. With Holtzendorff's hands-off approach to the job, Wilkinson was the agency's de facto director in many ways.

### **FRIDAY, AUGUST 29, 1952**

Frank Wilkinson regularly represented the Housing Authority in court. One of his roles was to defend the site selection for new projects and to testify to the agency's capacity to clear condemned land of hazardous materials and infestation. Chavez Ravine was indeed infested with rats, one of the worst cases Wilkinson had ever seen, according to his own recollections. But he was certain in his agency's ability to avert an outbreak of the plague as the one that had occurred in Los Angeles in the 1920s, and he was rather accustomed to delivering this testimony after ten years with the Housing Authority.

In his public appearances Wilkinson presented himself with extreme professionalism. He was tall, square-faced, and well kempt, with wire-rimmed glasses resting on a bulb nose. His hair was dark and just long enough to reveal a slight curl. He wore white collared shirts with ties and suit coats with oversized lapels. Wilkinson sported a rather stylish hearing aid with a wire running down to a battery pack that he carried on a strap under his jacket, without which he was more deaf than not. The hearing aid was little more conspicuous than a modern day earbud. When he initially started using it, upon returning from his adventures to the east, he heard his own voice for the first time and immediately affected a deeper baritone that he maintained for the

rest of his life, with a slight Mid-Atlantic timbre, the kind popular among Hollywood royalty of the time, Cary Grant and Katherine Hepburn and the like.

Attorney Felix McGinnis was representing a group of local landowners and property developers at the Elysian Heights Park condemnation hearing. After Wilkinson took the stand, McGinnis did what was expected, he grilled the Housing Authority spokesperson on the rat infestation and the choice of Chavez Ravine for the housing project site. Then quite abruptly, McGinnis asked Wilkinson to list all of the organizations to which he had belonged since he graduated from Beverly Hills High School.

The attorney for the realty lobby had gotten his hands on Frank Wilkinson's FBI file by way of Los Angeles Police Chief William Parker. And the moment McGinnis brought out Wilkinson's FBI file marked the moment both of the Wilkinsons' lives were upended and the Elysian Park Heights project was stunted.

Suddenly McGinnis was no longer interested in the site's health hazards, but in the Housing Authority's information officer Frank Wilkinson and his past associations. Wilkinson named university clubs, fraternal organizations, civic and religious groups, and groups pertinent to his qualifications as an expert witness in the case – the National Housing Conference, the National Association of Housing Officials, the Los Angeles Metropolitan Welfare Council, the L.A. County Committee on Opportunities and Needs of the Aging, the Housing Research Council – but when he finished McGinnis continued to prod, “To the best of your immediate recollection you have told us of all such organizations, is that correct?”

Wilkinson paused. It was at this point that he understood he had been set up, that this line of questioning was not really about his qualifications to testify on behalf of the Housing Authority. His options were limited – lie and face potential perjury charges, be honest about his

Communist Party membership and face the inevitable backlash, or plead the fifth and hope his exemplary record of public service might shield him from negative repercussions. "...No, I have been a member of other organizations."

McGinnis: Will you state the names of those other organizations?

Wilkinson: "I do not wish to state the names of any other organizations, and if necessary, I'd be glad to explain why."

After a bit more back and forth, with Wilkinson asking the judge for an opportunity to consult with the Housing Authority's attorneys and the judge refusing his request, Wilkinson offered this:

I believe that I shall be compelled by matters of personal conscience to refuse to answer the question and state that I am doing so because of personal conscience and I'd like to assure you that there is nothing that I have belonged to that I am not completely proud and my personal record wouldn't make me proud to state, but I do not feel that I want to answer this question and, if necessary, I would hold that to answer such a question might in some way incriminate me. (LAT 08/30/1952)

Without explicitly stating as much, Wilkinson had invoked the Fifth.

Howard Holtzendorff, who had been called to the hearing during a recess after Wilkinson was advised to retain private counsel, immediately suspended Wilkinson from the Housing Authority pending further investigation. The city council convened and one member who had long opposed the Elysian Park Heights project railed, "This man has jumped under the umbrella of the Fifth Amendment to the Constitution that people like him have been trying to destroy."

The next morning's Los Angeles Times front page read, "Lid Blows Off Housing; Top Aide Suspended."<sup>19</sup>

On September 3, 1952, Holtzendorff called Hugh Burns of CUAC to request the Committee's help in investigating his agency for subversives. In a letter to Burns, the Housing Authority chief wrote,

In making this request, it is our understanding that your committee will not only make a full and complete investigation of the charges against Mr. Wilkinson, but of any and all other employees of the Housing Authority whose loyalty has been questioned on affiliation with any alleged subversive organization charged. (Holtzendorff letter, 1952, CUAC Collection)

Weeks of salacious headlines followed while arrangements were made for CUAC to convene in Los Angeles to hear the testimony of Housing Authority personnel. All the while, the Los Angeles Board of Education was in the process of adopting its new anti-communist regulations as laid out by the County Counsel.

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<sup>19</sup> *The Los Angeles Times* was, in fact, among the most vocal organizations opposed to the Elysian Park Heights project and other public housing projects at the time. On more than one occasion the newspaper referred to Wilkinson as being in charge of the Housing Authority's public housing "propaganda campaign."



## OCTOBER 28, 1952

The Housing Authority of the City of Los Angeles was, in 1952, headquartered within the Aliso Village housing project, constructed ten years earlier during the war. Located just east of the LA River in the Boyle Heights neighborhood, Aliso Village was one of the first projects Frank Wilkinson had helped develop at the Housing Authority when he was first brought on from the Citizens Housing Council – it was at his urging that the project was integrated.

So it may have felt like pouring salt in the wound of his suspension from the Housing Authority two months earlier that it was there, in the Housing Authority offices at Aliso Village, that Frank Wilkinson had to face the California Un-American Activities Committee in a closed session on October 28, 1952.<sup>20</sup>

### *Enter Wilkinsons*

At the hearing were Frank and Jean Wilkinson, their team of three attorneys, CUAC members Hugh Burns, Nelson Dilworth, and Clyde Watson, senate attaché Earl Waters, and of course committee counsel and chief interrogator Richard Combs. As noted, the hearing was not open to the public. Representatives of the press were allowed outside of the Housing Authority conference room, but Hugh Burns had learned from Jack Tenney's mistake of making every hearing into a spectacle, thus inviting the committee's "hostile" witnesses to do the same.

Frank's testimony was heard first, and it followed a pattern largely familiar to that of others called before the committee. He freely provided committee members with information about his post-graduate travels around Europe and his work at the Housing Authority, but when

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<sup>20</sup> Some unsolicited historical context: On the same day California senator Richard Nixon was beginning a four-day tour of the state while campaigning for the Eisenhower/Nixon presidential ticket.

asked about his associations with various organizations or individuals that the committee obviously regarded as subversive or suspicious, he invoked the Fifth Amendment. The committee and Wilkinson's lawyers had agreed that in the interest of expediency Frank needed only to refer back to his previous invocation, so question after question – about the American Student Union at UCLA, the Congress of American Women, American Youth for Democracy, the National Negro Congress, and the list goes on – garnered the same response from Wilkinson: “I decline to answer upon the grounds previously stated.”

It seems necessary to note that at no point during the exchange did Combs or any of the committee members present ask Wilkinson about his political opinions, principles he held, actions he had taken in service of those beliefs, or anything of that sort. The questions they asked were limited to organizations he was associated with and people he might have known.

As expected, Combs's final question to Wilkinson was, “Are you now a member of the Communist Party?” Wilkinson's reply: “I decline to answer on the basis of the grounds previously stated.” (Aliso Village hearing transcript, 1952, CUAC Collection)

Jean Wilkinson and her attorneys (the same as her husband's) settled on a slightly different tactic. Rather than invoking the Fifth Amendment, when Combs asked Jean if she was Frank's wife she replied: “I refuse to testify in this particular hearing because it is obviously an investigation into my own husband's political activities. So therefore, I must refuse on the grounds of Section 1881 of the Code of Civil Procedure.” She was relying on the *spousal communication privilege*, that one cannot be compelled to testify on the subject of communications between spouses, and the *spousal testimonial privilege*, which more broadly protects an individual from testifying in proceedings related to their spouse – in effect, a sort of Fifth Amendment privilege against self-incrimination that extends to one's spouse.

The committee pushed back at this, telling Wilkinson that they would be asking her about her own activities, but aside from confirming her address Wilkinson did not respond to any question put forth by the committee except to state that she refused to answer based on spousal privilege, including questions about her membership in the Los Angeles Federation of Teachers, her current employment at the East Los Angeles Girls Vocational High School, her previous employment at Canoga Park High School, whether she was acquainted with Frances Eisenberg, and finally whether she was currently a member of the Communist Party.

Again, no questions were asked by the committee or its proxies about Jean Wilkinson's beliefs or whether her teaching was biased in one way or another. The committee's goals in this hearing were simply to get Wilkinson on the record either denying their allegations of communist associations or refusing to testify, and in that they succeeded.

### *Exeunt Wilkinsons*

Upon leaving the Housing Authority offices at Aliso Village for the very last time, Frank Wilkinson delivered a long statement to the press outside that read in part:

I believe that it is my right to think what I want, read what I choose and associate with whomever I please. All of these things belong to me; they are my rights as an American citizen; no one has the privilege to subject me in any manner to compulsory and improper invasion of these matters of private conscience. The greatest threat to our country today is fear. The hysteria that grips the land has frequently resulted in recent years in headlong flight from the fundamental constitutional principles upon which our government was founded. This voluntary abandonment of our cherished freedoms of speech, thought, and assembly must stop before democracy is destroyed.

He went on to describe how he came to despise hypocrisy and tried to build a better world for those who weren't privileged as he was, and continued,

To bow to expediency and answer the questions that have been put to me in court and by the Senate Committee on Un-American Activities would be a deliberate violation of the very constitutional principles upon which I believe a better world of tomorrow can only be built. Therefore, I will never, under compulsion, affirm or deny, directly or indirectly, my religious or political affiliations. (Wilkinson statement, 1952)

Just a few lines of his statement were reported in the major news outlets, of course. The Los Angeles Times ran a story on the front page under the headline "Public Housing Official Fired When He Dodges Red Query" that described Frank as the chief propagandist for the "unwanted \$110,000,000 Federal public housing scheme," listed his monthly salary of \$743,<sup>21</sup> and identified Jean as a public school teacher, saying, "the committee now has unearthed definite evidence that there was a clear-cut, coordinated effort on the part of the Communist Party to organize Housing Authority employees with Communist cells in the Federation of Teachers and the United Public Workers." (LAT 10/29/1952)

## **EISENBERG TESTIFIES**

Frances Eisenberg arrived at the Los Angeles Housing Authority offices at Aliso Village with her attorney William Esterman on the afternoon of October 28, 1952. Eisenberg was subpoenaed to appear before the Un-American Activities Committee after the committee had received a letter Eisenberg had sent to HACLA chief Howard Holtzendorff in support of Frank Wilkinson shortly after his suspension from the agency, urging Holtzendorff not to fire

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<sup>21</sup> Nearly every news report having anything to do with anti-communist firings listed salaries, presumably to reinforce their cost to taxpayers.

Wilkinson for refusing to answer questions about his communist ties while in court on behalf of the Housing Authority. The Housing Authority had received many such letters and forwarded them to CUAC, who likely recognized Eisenberg's name from her appearance before the committee six years earlier.

Eisenberg's questioning began with preliminary confirmations of her name and address, but when Combs asked Eisenberg if she knew Jean Wilkinson, with whom she had taught at Canoga Park High School some years earlier, she refused to answer. When Burns pressed her to answer the question, she replied:

I will state that since the Constitution of the State of California and the Constitution of the United States, both of which I have sworn under oath to support and defend, expressly forbid this kind of question, I must not repudiate that oath as a teacher and a citizen, nor must I aid this Committee, I might add, in repudiating it. That is my answer.

(Aliso Village hearing transcript, 1952, CUAC Collection)

Eisenberg did answer several questions about her membership in the Los Angeles Federation of Teachers and her position as editor of that union's newsletter *The Los Angeles Teacher*. But her response to questions about her involvement with the People's Education Center, American Youth for Democracy, and the Arts, Sciences and Professions Council was to invoke her previous response that in asking her questions about her associations the committee was forcing her to repudiate the oath she had sworn as a public school teacher to uphold the Constitutions of the United States and California. In effect, her argument was that the Levering Oath, in asking her to uphold the Constitution, prevented her from engaging in an exercise that violated the free speech and assembly rights of those called to testify.

At the end of this largely one-sided back-and-forth, Combs asked, “Are you a member of the Communist Party of Los Angeles County?” and Eisenberg’s response was simply, “The same reply.”

The next morning, the Los Angeles Times quoted Superintendent Stoddard in response to Eisenberg and Jean Wilkinson’s testimonies. He paraphrased the new rule adopted on September 22, saying that any teacher who refused to answer questions at an Un-American Activities Committee hearing “will be recommended to the Board of Education for dismissal from employment as a Los Angeles school employee in the manner provided by law.” (LAT 10/29/1952)

## **WHY NOW?**

In 1946 the Board of Education had all but exonerated Eisenberg and Blanche Bettington because any evidence presented during the CUAC hearing or their own follow-up investigation that the teachers were evangelizing communism and denouncing capitalism to their students was (1) hearsay and (2) drowned out by an outpouring of support from their students.

This time around the committee did not bother to ask Eisenberg about her job as a teacher, other than to confirm that she was one, or whether she injected communism into her teaching. At no point did the committee ask Eisenberg about whether she advocated for overthrowing the government, violently or otherwise, or about her thoughts on capitalism, democracy, or any other social structures. And the committee sought no input from the community or Eisenberg’s students or colleagues on the matter.

Six years earlier she had successfully defended herself from the California Un-American Activities Committee’s attempts to silence her. Now, under the direction of Burns and Combs,

CUAC was entirely able to control the narrative – they held their hearings in private, and they were laser focused on connecting witnesses to organizations and people they had already identified as subversive and getting those witnesses on the record either denying those connections and associations or invoking the Fifth Amendment, and subsequently feeding that information on their own terms to sympathetic press outlets.<sup>22</sup>

### *The Fifth*

In the committee’s summary of the Housing Authority investigation and the Wilkinson/Eisenberg hearing contained in the seventh official CUAC report, published by the committee in 1953, Richard Combs wrote the following about witnesses who avail themselves of the immunity against self-incrimination:

As we see it, only an idiot or an enthusiastic pro-Communist could regard anyone who immediately flees behind the Fifth Amendment when questioned about Communist matters, who is invariably represented by fellow-traveling or Communist lawyers and whose dossier reflects a steady pattern of Communist activity over a period of years, without having his suspicions aroused concerning the pro-Communist proclivities of the individual. And to this committee it is a disgusting spectacle to see persons employed by state, county and municipal governments, as teachers or members of university faculties at the expense of the taxpayer, arrogantly refuse to state to a legislative committee whether or not they are Communists. (CUAC 7, 1953, p. 124)

Again, I would note, what so *disgusted* Combs was that public sector workers would refuse to answer his committee’s questions, not what they believed in or how they approached their work.

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<sup>22</sup> Nobody ever acknowledged the connections unless they were “reformed” communists now aiding the committee’s efforts, and those witnesses were generally not asked questions like those asked of “hostile” witnesses.

In the absence of evidence that any of these individuals were engaging in sedition or anything remotely criminal, his outrage was aimed at their invocation of their constitutional rights.

### *Housing Authority Investigation Findings*

At one point Combs publicly stated he had identified 30 or more employees within the Housing Authority that were “tools of communists,” (LAT 09/27/1952) but when the Housing Authority investigation was completed, a few months after the initial Wilkinson brouhaha, they had identified and terminated the employment of only five alleged communists among the agency’s 450 employees. Still, Combs warned,

...one Communist in the proper place can cause as much damage as a thousand. The housing authority is a natural target for Communist infiltration because the people who are forced to live in public housing units are more apt to be socially maladjusted and dissatisfied and therefore more susceptible to the blandishments of clever Communist recruiting specialists than the average person who has a home of his own. Furthermore, the element of congestion and the high incidence of racial minority groups combine to make the field even more fertile.

He concluded, “it is quite apparent that the Communist Party of Los Angeles County sent its agents into the employ of the housing authority for the purpose of capitalizing on the opportunity for recruiting among the other employees and the residential personnel throughout the entire project,” but he deemed the Housing Authority of the City of Los Angeles “now free of Communist Party members.” (CUAC 7, 1953, p. 132)

Though the Housing Authority investigation was brief and yielded only a handful of firings, by the time CUAC was recounting it in the report released in the summer of 1953 the



anti-communists' war on teachers was just about to kick into high gear with the passage of the Dilworth Act. In the teachers of Los Angeles the anti-communists found a group of educators who understood the value of academic freedom, led by a union that had spent nearly two decades fighting for job protections in the form of teacher tenure laws, and many of them were determined to take a stand against what they considered an existential threat to the teaching profession.

## THE SAGA CONTINUES

Frances Eisenberg and Jean Wilkinson were fired at the November 20th meeting of the Los Angeles Board of Education.<sup>23</sup> The two teachers were officially terminated for (1) unprofessional conduct and (2) violating the regulations adopted at the Board's September 22nd meeting. The front page headline of the Los Angeles Times read, "Board Votes to Oust Teachers Who Won't Answer Red Quiz." (LAT 11/21/1952)

On the teachers' side, communism remained the elephant in the room. The teachers and their supporters did everything to avoid discussing the issue of communism in their responses to the Board's actions. They framed the teachers' interrogation by CUAC and subsequent firing by the Board as an attack on academic freedom and questioned the constitutionality of denying the free speech rights of one particular professional class – teachers. The Los Angeles Federation of Teachers proclaimed the Board's actions "an attack against public education." The union's statement read in part,

The Board's concern should be with the quality of teaching in the classroom, the sole criterion of a teacher's competency, and not with the teacher's private life outside the classroom. It is the children who are the real victims of an action which drives academic freedom to a level lower than at any time in the history of the Los Angeles school system. The Board's move is neither legal nor ethical. .... We can have witch-hunts in the schools or democratic education. We cannot have both. (LA Teacher, Nov. 1952, Eisenberg Collection 2)

Eisenberg spoke of her love of country and reverence for the Bill of Rights, writing,

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<sup>23</sup> The reason for the three-week delay, as far as I can tell, is because the Board didn't feel it could take action without having the hearing transcript, which they formally requested from CUAC on the 30th, and which likely took a bit of time to get their hands on, what with the committee operating out of Sacramento and occasionally Hugh Burns's senate district office in Fresno.

I could meet the attacks of these Un-American Activities Committees in no other manner than to uphold the very Constitutional rights which these committees seek to destroy...To have pursued any other course of action than to deny to these committees such unconstitutional procedures, would have betrayed the hundreds of young people I have instructed for two decades.

Now outside of the CUAC hearing in which she did not even admit to being a teacher, Jean Wilkinson too found her voice, “If teachers are to instill in the hearts of students a devotion to and a respect for democracy, they must be secure in their own rights under democracy.”

These arguments would eventually prove persuasive, but not for another 15 years. At the time of Eisenberg and Wilkinson’s ordeal, of course, the U.S. Supreme Court had *just* ruled in *Adler v. Board of Ed* that teachers could be subjected to more scrutiny than other professionals and denying teachers the privilege of public employment could not be equated with denial of their First Amendment rights.

## **HOW DO YOU SOLVE A PROBLEM LIKE SUBVERSION?**

Prior to their official termination though, in the wake of the October 28th hearing in which Eisenberg and Wilkinson had refused to answer questions about their Communist Party affiliations put to them by the California Un-American Activities Committee at Aliso Village, the Los Angeles Board of Education had immediately convened a so-called loyalty committee and scheduled some 45 teachers to testify regarding their past and present associations with people and organizations included among CUAC’s list of subversive organizations and communist fronts. The list of teachers conspicuously included Harold Orr, leader of the independent union Los Angeles Federation of Teachers.

The Board ultimately decided to pause this internal effort, however, when faced with intense backlash at their public meetings by a very vocal coalition of unions and community organizations, with hundreds of people packing their usually sparsely attended meetings. Posing further challenges to the Board's actions, both Eisenberg and Wilkinson appealed their termination, as was their right according to the tenure laws the Local 430 had fought for before it was ousted from the American Federation of Labor.

While the Eisenberg and Wilkinson cases played out in district court, however, the Board of Education agreed to contract with the California Un-American Activities Committee to perform loyalty checks on every single employee in the district, in a process mirroring CUAC's ongoing partnership with colleges and universities at the time. Rather than the Board and its loyalty committee taking on the task of identifying communist sympathizers one by one, they reasoned that Combs and his team of investigators employed by CUAC could more effectively vet the Board's roughly 26,000 employees, constituting more than one percent of the population of the city of Los Angeles at the time.<sup>24</sup>

And vet they did, costing the Los Angeles Board of Education an initial investment of \$3000;<sup>25</sup> later Board reports indicate the price of outsourcing loyalty checks to CUAC continued to increase over the years, perhaps costing the Board as much as \$10 per employee, equivalent to about \$100 in 2021. The process was not particularly expedient by today's standards, but by November of 1953 the Board of Education reported that 304 names had been "referred for loyalty check," and of those 304 district employees 48 had either resigned or otherwise been terminated. (Board of Ed meeting minutes, Nov. 1953, LAUSD Collection)

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<sup>24</sup> According to the 1950 Census Los Angeles had a population of 1,970,358.

<sup>25</sup> Equivalent to roughly \$29,300 in 2021.

In the meantime... a lot was happening actually. More Los Angeles teachers were beginning to enter the fray in concert with a visit from HUAC, the Eisenberg and Wilkinson appeals were not going well for the teachers, and the Los Angeles Board of Education was coordinating with at least one member of CUAC to draft legislation that would protect the Board's anti-communist rules by replicating it at the state level.

### **HUAC COMES TO TOWN**

On March 23, 1953, the House Un-American Activities Committee returned to Los Angeles for the purpose of investigating communist infiltration into the radio, television, and motion picture industries. Six years earlier, the infamous Hollywood Ten had defied the committee and the blacklisting of communists in Hollywood had begun in earnest. Given recent events, the Velde Committee also planned to devote several days to hearings on the subject of communism in public education. In addition to receiving wide coverage in newspapers, the committee hearings were televised in the Los Angeles region, so interest was high when sixth grade teacher Abraham Minkus took the stand and, as the LA Times put it, "produced more fireworks than any session since the panel convened" five days earlier. (LAT 03/28/1953)

Minkus, another longtime leader in the Los Angeles Federation of Teachers (*née* American Federation of Teachers Local 430), testified after two committee-friendly witnesses had described the alleged communist takeover of the teachers' union. One of the witnesses, Leroy Herndon, a Glendale Junior College teacher, summarized the case against academic freedom for communist teachers,

My conception of academic freedom is that a teacher should teach his subject to the best of his ability and use his intellect to teach the truth as he sees it. The communist teacher

is not a free agent. When he joins the party he agrees to accept the directives of the party and is told what to think and how to think. He is not a free agent, intellectually or morally. Where communism is concerned, I don't see how there can be a question of academic freedom. (LAT 03/28/1953)

In addition to refusing to answer whether he was a communist, Minkus's testimony was fiery and steeped with contempt for the committee. Community reaction to his demonstration was mixed, but universally *heated*, and illustrative of why Hugh Burns had done away with such conspicuous anti-communist pageantry; though it had certainly excited anti-communist fervor, it had also invigorated the *anti-anti-communists*, and could have the effect of making it easier for those opposed to the committee's efforts to raise funds toward those aims. Within days, the Board of Education had received dozens of phone calls and letters related to Abe Minkus's employment as a public school teacher, mostly opposed to his continued employment. Some applauded Minkus and others who stood up for their constitutional rights, but many more wondered how the Board could justify spending taxpayer dollars employing someone so abhorrent. Many concerned citizens made reference to soldiers fighting against communism in Korea. (Minkus backlash, 1953, LAUSD Collection)

On Monday, March 30, 1953, the Board of Ed moved to dismiss Minkus, charging him as they had Wilkinson and Eisenberg with unprofessional conduct and violating Board regulations, with an added charge of immoral conduct. According to the state's teacher tenure laws, immoral conduct was one of only four charges for which a teacher could be outright fired, and the only one remotely relevant to the anti-communist cases.

Three other teachers named as communists by Leroy Herndon testified at HUAC the next week – Rose Posell, Serrill Gerber, and Harry Shepro – but these hearings were not televised, so

they received significantly less fanfare. All three were once officeholders in the former Local 430 – Shepro was its first president back in 1936 – and all refused to answer questions related to their communist ties. Rose Posell resigned before the Board could take any action against her. Gerber and Shepro were suspended immediately following their hearings. Before any of these first five cases were heard in court, however, the Board’s plan to expand its anti-communist rules statewide were being implemented.

## THE DILWORTH ACT

Eisenberg and Wilkinson were given one month from their announced suspensions on November 20, 1952, to request hearings to appeal their terminations. According to the state's teacher tenure laws, both women were able to continue teaching up until their termination was official; lacking any incentive to advance the timeline more than necessary, they filed their requests on December 18.

### MR. KENNEDY GOES TO SACRAMENTO

By then seven weeks had passed since the CUAC hearing at Aliso Village. As the Eisenberg and Wilkinson cases had already demonstrated, the Los Angeles Board of Education would need to prepare for a years- possibly decades-long siege if it was forced to give each ousted teacher an opportunity to appeal their firing in court, per the state's tenure laws. It would be one thing to keep the teachers on the payroll, but being forced to keep them *in the classroom* after they'd been accused of disloyalty, while their cases crept through the courts? That was an untenable position for the Board – bad optics, to be sure, for a group of publicly elected officials. And so within a couple days of receiving Eisenberg and Wilkinson's hearing requests, the Board and Superintendent Stoddard appealed to County Counsel Harold Kennedy, who had drafted the Board's original anti-communist rules, to work with the chair of the State Senate Investigating Committee on Education, one Nelson Dilworth, on drafting legislation that would allow for the immediate firing of teachers who refused to answer questions about their communist ties.

In addition to chairing the Senate Investigating Committee on Education since its inception in 1947, Dilworth was a longtime member of the California Un-American Activities Committee. The *Dilworth* Committee was originally established in response to the *Building*



*America* textbook series brouhaha. Aside from the significant overlap of interests between the committees, the Dilworth Committee had one other important commonality with CUAC, that being the chief counsel for both committees... Richard Combs.

The *strategies* employed by the two committees did differ somewhat. Under the leadership of Hugh Burns, the California Un-American Activities Committee had by this point abandoned any pretext of needing to produce legislation and resigned itself to (1) publishing biennial reports and (2) producing a vast repository of intelligence that could be offered to interested parties for some modest recompense. Universities, municipalities, school boards, other government agencies could employ the committee's intelligence operation to their own ends, mostly auditing personnel – background checks and the like, as they were doing with the Los Angeles Board of Ed and with colleges and universities around the state.

The Dilworth Committee, on the other hand, produced several highly focused reports each year of its operation – one on textbooks for instance, one on junior colleges, one just on Pasadena public schools, one on loyalty oaths – but they also periodically endeavored to pass meaningful legislation. Indeed, volumes could probably be written about the legislation proposed by Dilworth and his committee, who were quite preoccupied with sex education, but also legislated on textbooks, as during the *Building America* foofaraw, and earlier in 1953 Dilworth had tried and narrowly failed to pass a bill that would mandate Bible reading in public school classrooms. Dilworth's crowning achievement, however, would come in the wake of that failure in the form of Senate Bill 1367, or what would come to be known as the *Dilworth Act*, despite the fact, of course, that LA County Counsel Harold Kennedy effectively wrote it.

The Dilworth Act would, as Kennedy put it, “outlaw communists in the public school system,” (LAT 04/30/1953) by subverting the state's teacher tenure laws, allowing the state's

school districts to remove teachers from the classroom immediately if they failed to answer questions about their past or present membership in the Communist Party before a school board or legislative investigative committee. “Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such question,” the law read, “shall be guilty of insubordination...and shall be suspended and dismissed from his employment.” (CA Ed. Code §§ 12600, 1953)

Teachers were still given the right to appeal their termination cases to district courts, now within ten days of their initial suspension rather than 30, but they could not teach following suspension and they could not effectively collect a paycheck.<sup>26</sup> The legislation would officially preclude the state’s education boards from waiting for a court to rule in favor of a teacher’s termination, sometimes months after the teacher had defied an anti-communist inquiry, before removing them from a teaching position and from the payroll. The law made further specifications about past Communist Party membership, including requiring employees with Communist Party membership histories after September 10, 1948, to file affidavits affirming they’d left the Party with their school boards within 90 days of the law’s effective date or face dismissal.<sup>27</sup>

On Wednesday, May 20, 1953, the Los Angeles Board of Ed sent Deputy LA County Counsel Clarence Langstaff, Superintendent A.J. Stoddard, and Board members Ruth Cole and Edith Stafford to advocate on behalf of the bill in a hearing of the State Senate Education

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<sup>26</sup> There was a provision included in the law that would have allowed a suspended teacher to continue collecting salary during the appeals process by posting a bond that would be subject to seizure if the court ruled in favor of termination, which was all but certain.

<sup>27</sup> In a 1955 amendment to the Dilworth Act, the period after which one’s Communist Party membership was germane – initially set to begin September 10, 1948, or the five years preceding the Dilworth Act’s passage – was pushed back to October of 1945 after complaints from Richard Combs, who claimed the 1948 date limited their ability to crack down on subversives.

Committee in Sacramento. The bill, along with a nearly identical bill aimed at all *other* public employees called the Luckel Law (CA Gov. Code §§ 1028, 1953), was passed by the full legislature with only three votes in opposition on June 3, 1953, and on July 3, Governor Earl Warren signed both bills into law; they were scheduled to take effect September 9. The LA Times editorial board framed the law as plugging “a legal loophole” exposed by Eisenberg and the other early cases that had allowed teachers whose loyalty had been challenged “to continue indoctrinating pupils for so long a time.” The Times editorial largely parroted arguments seen in the 1952 Supreme Court case *Adler v. Board*.

Teachers, like other citizens, have the right to refuse to answer on constitutional grounds, but as public servants they have a special duty to be candid with the public’s duly elected representatives as to their loyalty. They have no constitutional right to teach and the tenure law was enacted to protect the overwhelming majority of thoroughly loyal and devoted teachers, not the subversive few. (LAT 07/10/1953)

They concluded, “Most teachers, we believe, will applaud this step to weed out troublemakers.”

## THEY FOUGHT THE LAW

Both Frances Eisenberg and Jean Wilkinson, who had appealed their dismissals by the Los Angeles Board of Education back in December of 1952, were still teaching at their respective schools in the summer of 1953 when their cases were heard at the LA County Superior Court, where each teacher could make her argument against termination.

### *Wilkinson*

Wilkinson's case was something of an anomaly among the teachers targeted, as it rested on spousal privilege rather than the First or Fifth Amendments. Importantly for all the targeted teachers, though, Judge Anthony Brazil found the anti-communist rules adopted by the Board in 1952 to be "reasonable," a judgement that would be cited repeatedly in subsequent cases.

Ultimately the Superior Court of Los Angeles upheld Wilkinson's dismissal on November 9, 1953, having determined that because Wilkinson chose not to abide by the rule compelling her testimony, the Board was within its rights to fire her. In his opinion, Judge Anthony Brazil wrote,

I hold...that the rule requiring a teacher to answer questions concerning her activities in communism before a proper investigating committee is a reasonable rule; the violation of which constitutes unprofessional conduct .... such conduct is inherently unprofessional in one who is hired by a governmental agency in one of the most important of governmental functions – the teaching and instruction of the youth of the country. The power of a teacher to mold the thoughts and conduct of children is so great that surely the State must have power to inquire into the beliefs of the teacher whose care the youth of the country is placed for instruction. (*Board v. Wilkinson*, 1953, LAUSD Collection)

*Eisenberg*

Eisenberg's termination case was heard in the Los Angeles Superior Court on August 28, 1953, almost exactly one year after Frank Wilkinson had testified in the very same building on behalf of the city's Housing Authority in the Elysian Park Heights case. Eisenberg's case was held by brief, though, so theatrics of the type seen when Frank Wilkinson was ambushed by public housing opponents were not to be had. Each side submitted their arguments in writing, after which Judge J.T.B. Warne would rule.

In the January 1953 edition of *The LA Teacher*, the newsletter of the Los Angeles Federation of Teachers that Frances Eisenberg had long edited, Eisenberg explained why she had defied CUAC and the Board of Education.

I am defending my right, and the right of every other teacher to live under the Constitution of the United States as other citizens do. I am defending the education of youth to which I have given 22 years of my life .... The State Education Code, Section 13230 states, 'Each teacher shall endeavor to impress upon the minds of the pupils the principles of morality, truth, justice, and patriotism, to teach them to avoid idleness, profanity, and falsehood, to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties, and dignity of American citizenship,' and my conscience will not let me be compelled to repudiate this sworn obligation. (LA Teacher, Jan. 1953, Eisenberg Collection 2)

The Los Angeles Superior Court did not see it that way. The Court acknowledged Eisenberg's right to refuse to answer the questions posed to her at the CUAC hearing, but said, "such refusal, nevertheless, considering her duty and trust as a teacher in the public schools -- having

knowledge of the Board of Education rules and regulations, would be unprofessional conduct justifying her dismissal.” Judge Warne deferred to the first section of the Board rule, in which the Board purported that communism posed “a clear and present danger” to Los Angeles and the city’s schools, and repeated the conclusions of the U.S. Supreme Court in its *Adler* decision.

Concededly defendant had the constitutional right guaranteed her to refuse to answer the question: ‘Are you a member of the Communist Party of Los Angeles County?’ if her answer would tend to incriminate her, but, on the other hand, she had no constitutional right to her position as a teacher in the public schools. Defendant’s position as a public employee is only a privilege subject to reasonable restrictions and obligations. (*Board v. Eisenberg*, 1954, LAUSD Collection)

Frances Eisenberg taught her last class on February 23, 1954. The district court decision was officially filed that morning, and the Board dismissed her that afternoon. Eisenberg appealed, but found no sympathetic judges in the Appellate Court.

#### *Minkus/Gerber/Shepro*

Abe Minkus, Serrill Gerber, and Harry Shepro appealed their dismissals as well and their cases were consolidated into one. Their district court hearing went quite the same as Eisenberg’s had, except the charge of *immoral conduct* against Minkus was denied, and the Board was forced to pay his salary for the time between his dismissal and his court hearing like they had for all of the others. The ruling from Superior Court Judge Joseph Vickers reads much the same as the excerpts above. The three were all officially terminated on January 7, 1954.

In a perfect illustration of the collaborative effort among official actors that the progressive teacher purge necessitated, the Los Angeles Times on Friday, January 8, 1954,

published a front page story that read, “A State legislative committee, the Board of Education and the Superior Court joined forces yesterday in a three-way crossfire against Los Angeles schoolteachers suspected of left-wing leanings.” (LAT 01/08/1954) While the Board was following through with their dismissals of Minkus, Gerber, and Shepro, Judge Warne of the LA County Superior Court had just upheld the firing of Frances Eisenberg,<sup>28</sup> and CUAC was back in town interrogating more teachers.<sup>29</sup>

## **POST-DILWORTH CASES**

The 90-day period set forth by the Dilworth Act in which teachers who had been members of the Communist Party at any point after September 10, 1948, needed to submit an affidavit to their respective school boards, expired on December 9, 1953.

One week later, on Wednesday, December 16, 1953, the Los Angeles Board of Education held its first special meeting for the purposes of interrogating employees that had been identified by CUAC and Richard Combs’s team of investigators as having ties to the Communist Party or various communist front organizations. This first foray into mass firing included eight teachers: David Arkin, Ann Conner, Minna Cooper, Leon Goldin, Helen Hughes, Claire Kaye, Charles Sassoon, and June Sirell. All were given the option to testify (1) privately in executive session, with only the Board and its various delegates and the teacher and their attorney present, or (2) in open session, where the public and representatives of the news media could observe. All but Ann Conner chose to testify publicly.

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<sup>28</sup> The final judgement was not filed until February 23.

<sup>29</sup> One of whom was actually Serrill Gerber, perhaps in an effort to test whether the Committee could initiate a Dilworth Act firing in the middle of his pending court case.

The Board had solicited the help of Deputy County Counsel William Lamoreaux in leading the interrogations, and all of the seven public hearings followed a familiar formula. Lamoreaux asked each teacher if they were currently a member of the Communist Party, followed by six similarly worded questions, one for each year between 1953 and 1948, inclusive – “Were you knowingly a member of the Communist Party at any time during the year 1953?” “Were you knowingly a member of the Communist Party at any time during the year 1952?” – and so on. And each teacher refused to answer these questions, while offering various objections to the process.

The teachers noted that the Board conspicuously avoided questioning the witnesses about their behaviors or activities beyond Communist Party associations. Minna Cooper challenged the Board to produce evidence of her failure to teach her students prosocial behavior, morals, and citizenship. David Arkin did much the same, saying, “This body knows that I have committed no crimes or engaged in a conspiracy.<sup>30</sup> I invite them to go to the District Attorney if they think otherwise.”

The teachers argued that the oaths of allegiance they had signed as public employees in the state, oaths to uphold the U.S. Constitution and the California State Constitution, ought to preclude hearings such as these. Arkin recalled, “I meant it when I signed it and I still mean it.” Helen Hughes said,

My answer is fully and adequately covered in my oath of allegiance now on file in the personnel office. I have sworn under oath that I do not believe in the violent overthrow of the government nor belong to any organization that advocates the violent overthrow of

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<sup>30</sup> Arkin, who co-wrote the song “Black and White” with Earl Robinson in 1954 (famously covered by the band Three Dog Night in 1972) and published a children’s book by the same name, is also notable for being the father of actor Alan Arkin.



the government... I deeply resent the implication of my disloyalty by being called before the Board of Education in this manner. (LAT 12/17/1953)

Leon Goldin openly questioned the legality of the hearing. “The board has the right to employ teachers to teach in the classrooms, but does not have the right to take away their citizenship. I consider it my duty to challenge a proceeding that I consider illegal.”

Due to its openness, the hearing was widely reported. The Los Angeles Times coverage of the event spanned three pages. Adjacent to an article on Chuck Yeager breaking the speed record in a “rocket plane,” the Times’ front page read in bold, “Seven L.A. Teachers Defy Board at Loyalty Hearing,” with large photos of Arkin, Cooper, and Hughes.<sup>31</sup> The paper described the teachers as “exhibiting varying degrees of resentment at the board’s inquiry into their political beliefs,” noting also that they were only seven of “among 171 school employees named by [Superintendent Stoddard] as suspected left-wingers.” (LAT 12/17/1953)

On December 30, 1953, the Los Angeles Board of Education moved to dismiss all seven of the teachers who testified publicly, suspending the five permanent teachers pending their court hearing requests and firing outright the two substitute teachers, Helen Hughs and Charles Sassoon, whose provisional employment did not protect them as much as the state’s teacher tenure laws protected the full-timers. None of them were protected from the threat of public harassment, however – following the Board’s dismissal proceedings the LA Times published all of the teachers’ full names, school assignments, and home addresses on its front page. (LAT 12/31/1953)

The five suspended teachers did appeal their dismissals, but per the Dilworth Act the LA Board of Ed was free to remove them from the classroom and stop paying their salaries while

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<sup>31</sup> Yeager’s December 12th, 1953, speed record, reaching Mach 2.4 (1650 mph), stood for three years.

their cases worked their way through the courts. Unsurprisingly, Superior Court Judge Alfred Bartlet determined that the Dilworth Act was constitutional and their terminations were all officially upheld in district court by September of 1954.

## **...AND THE LAW WON**

### *Wilkinson*

Though Jean Wilkinson appealed the Superior Court decision upholding her dismissal, the eventual appellate court opinion, which was not decided until May 10, 1954, some six months after Judge Brazil's ruling, was even more histrionic:

In the life-and-death struggle into which our people have been plunged by the monstrous conspiracy called communism, it is becoming more and more apparent that it is essential for the continuance of our national life that we know who is for us and who is against us. This is no time to allow any person who would destroy us, our liberties, our religious convictions, and our government to be employed in any branch of that government, — 'to bite the hand that feeds it.' The men and women of America who pay their salaries have a right to know whether or not any of their employees are communists. (*Wilkinson v. Board*, 1954, LAUSD Collection)

In the unanimous opinion written by Justice Minor Moore, the Appellate Court reiterated the familiar language of *Adler*:

A teacher's employment in the public schools is a privilege, not a right. A condition implicit in that privilege is loyalty to the government under which the school system functions. It is the duty of every teacher to answer proper questions in relation to his

fitness to teach our youth when put to him by a lawfully constituted body authorized to propound such questions.

### *Eisenberg*

In her appeal of the Superior Court ruling, Eisenberg argued that it was her duty to invoke and protect the state and federal constitutions and that by cooperating with CUAC and the Board of Education in its unlawful scheme to root out leftists would render her “a corrupt, indecent person, unfit to teach school.” The Appellate Court found all of this irrelevant.

The [lower] court’s duty was plain: to ascertain whether the charge of appellant’s refusal to answer was true. Her beliefs had nothing to do with it. Having found that the committee convened, that appellant appeared, that the question was asked, and that she refused to answer, the court had not far to seek to conclude that her intransigence constituted sufficient grounds for her dismissal. (*Eisenberg v. Board*, 1954, LAUSD Collection)

Indeed, the court took pains to make clear that they were ruling on the question of whether Eisenberg or any other teacher could be fired for breaking a rule adopted by the Board of Education and in so many words concluded that that Board of Ed rule could have denied Eisenberg any number of her constitutional rights – she could have her constitutional rights or she could have employment as a public school teacher.

The duty of the court to order her dismissal was according to the truth of the charge. Her only way to avoid a dismissal was to answer the question. The artificial argument that her conduct was not involved is of no avail. She was on trial for her conduct, to wit, not

answering a question relating to the public good. No exceptions were provided for in the rule violated. (*Eisenberg v. Board*, 1954, LAUSD Collection)

Remarkably that did not strike any of the three members of the Appellate Court as a contradiction or the least bit troubling in its apathy toward the constitutional rights of public employees.

Eisenberg also attempted, in her appeal, to question the legitimacy of the State Senate resolution that created the California Un-American Activities Committee back in 1941. This too was in vain. The court noted that the Committee's actions were "done to protect the United States and every political subdivision thereof."

The resolution [creating CUAC] means no more than 'stand up and be counted.' It makes no interdiction against any person's saying whatever he desires to say. It is designed to give the legislature a knowledge of social conditions prevailing in California whereby to make laws intelligently. If a teacher will not cooperate by informing the committee whether he is a party member of the Communists, he violates a definite rule of his school board and is entitled to nothing but dismissal from the service.

Eisenberg further appealed to the California Supreme Court, but fell short of getting a hearing by a vote of four to three.

All of the teachers' objections to having to testify on top of signing the Levering Oath fell on deaf ears, as Wilkinson and Eisenberg's appeals revealed:

The Levering Act does not relieve such [school governing] bodies from the duty of inquiring into the fitness of teachers, and from prescribing rules reasonably necessary to protect our schools against traitors — infamous traitors who would scatter dragons' teeth

amongst boys and girls of their own American fellow citizens. (*Wilkinson v. Board*, 1954, LAUSD Collection)

Neither the Board nor the Legislature itself deemed compliance with the Levering Act sufficient protection for the public. A teacher must answer directly that she is or is not a member. Past pledges or oaths of loyalty are not sufficient for the School Board which has jurisdiction over a vast empire of wealth, pupils and teachers. Its responsibility impels it to require every teacher to stand and be counted. Unless it knows the extent of reliance to be placed in a teacher, its attempt to preserve American ideals will go for naught and treason might run rampant. (*Eisenberg v. Board*, 1954, LAUSD Collection)

### *Minkus/Gerber/Shepro*

Abe Minkus, Serrill Gerber, and Harry Shepro abandoned their appeals when it became clear that their efforts were doomed to fail based on the outcome of the appeals of Jean Wilkinson and Frances Eisenberg.

### **POST-DILWORTH APPEALS**

The five full-time teachers who were among the first group of Dilworth Act victims didn't get a chance to appeal their cases beyond the district court. They were beaten to the punch by an Orange Coast College math instructor named Henry Clinton St. John and a San Diego State College professor named Harry Steinmetz. In parallel circumstances to the Los Angeles teachers, officials at Orange Coast Junior College had fired St. John for insubordination under the Dilworth Act after he refused to answer questions about his Communist Party membership

history. Harry Steinmetz had met a similar fate under Dilworth's sister legislation, the Luckel Law. As with the Los Angeles five, district court judges had upheld St. John's and Steinmetz's dismissals.

In Steinmetz's appeal, the California Supreme Court echoed the rulings of the lower courts in the LA teachers' and other Dilworth cases. "A public employee, of course, cannot be forced to give an answer which may tend to incriminate him, but he may be required to choose between disclosing information and losing his employment." (44 Cal. 2d 816, 1955, p. 824) The Luckel Law was ruled constitutional in 1955 by a six-to-one majority.<sup>32</sup>

And the next year, in St. John's appeal, the court based its ruling on the *Steinmetz* opinion. The appellate court got in a few digs at the concept of academic freedom for good measure:

Academic freedom, upon which the appellant relies, does not mean much unless the teacher is willing to accept the responsibility which is an inherent part thereof, and is willing to cooperate in maintaining the conditions which make such a freedom possible. Such matters as the prohibition against compelling self-incrimination and the presumption of innocence, which are applicable in criminal prosecutions, are false quantities which have no logical connection with an inquiry respecting a person's qualification for public employment. (146 Cal. App. 2d 455, 1956, p. 462)

And the California Supreme Court denied St. John a hearing, having ruled on basically the same issues in the *Steinmetz* case. The teachers had exhausted every avenue for redress.

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<sup>32</sup> Justice Jesse Carter dissented, arguing both that the statute was unconstitutional and that Steinmetz had not violated it, as he had answered several questions put to him by the State Board of Education that in effect addressed the two questions he refused to answer, Carter wrote, "Even if one should be so caught up in the hysteria of our times that he fails to perceive the intrinsic unconstitutionality of this statute, he still must recognize the fact that the decision of the majority of this court in this case is erroneous..." (44 Cal. 2d 816, 1955, p 827)

### *The Teachers' Defense Committee*

Back in 1953, the first victims of the Los Angeles teacher purge had established the Teachers' Defense Committee as a way to mobilize resistance to the firings and channel donations to the teachers' legal efforts. The organization shuttered in 1955 after the Steinmetz decision was handed down. In a letter to the group's supporters, Frances Eisenberg listed a few of their successes – raising \$12,000 for the defense fund, helping the purged teachers find employment outside of the LA public schools, and a partnership with the CUAC and HUAC opposition group, the Citizens Committee to Preserve American Freedoms. She ended with a message of hope, “It has been a deep satisfaction for us teachers to have received moral and financial support from so many parents and friends of children in our common battle. We thank you in the name of freedom and peace whose dawn will shine once more.” (Eisenberg letter, 1955, Eisenberg Collection 2)

Things probably seemed dire for our teachers in 1955, with court losses mounting, nary a win, and no indication of that ratio changing. But the willingness of the Supreme Court to uphold the doctrine established in *Adler* – that teachers needed to accept any potential deprivation of civil liberties if they wanted the privilege of public employment – would very soon show signs of weakening. In an ironic twist of fate, Earl Warren's anti-communist *bona fides* – pushing the Levering Oath and signing the Dilworth Act and Luckel Law – had cemented his standing as President Eisenhower's choice to fill the next open Supreme Court seat, which he did in late 1953, putting him in a powerful position to *restrain* such efforts in the future if he was willing to approach his new role with an open mind. The addition of Earl Warren had the effect of shifting

the ideology of the court leftward, ultimately forcing California's anti-communists to abandon the efforts they had begun under Warren's governorship.



## THE SUPREMES

Hints of the U.S. Supreme Court's evolution on anti-communism could be seen as early as 1955, two years after Eisenhower appointed Warren to fill the Chief Justice seat opened by the death of Fredrick Vinson, and one year after the seminal *Brown v. Board*. The Court issued a handful of opinions between 1956 and 1960 that gradually chipped away at states' and institutions' most egregious anti-communist overreaches.<sup>33</sup>

### *Slochower*

The Court's opinion in 1956's *Slochower v. Board of Higher Education of New York* should be of particular interest to *our* progressive teacher purge. A professor at Brooklyn College, part of the City University of New York system, Harry Slochower had been called to testify before the U.S. Senate's anti-communist committee, chaired by Senator Patrick McCarran, in 1952; when asked at the hearing about his Communist Party membership in 1941, the professor invoked his Fifth Amendment right against self-incrimination. (Heins 2013) Slochower was dismissed without a hearing in accordance with Section 903 of the New York City Charter, which provided that a city employee would be terminated if they pleaded the Fifth in response to questions from a court or investigating committee about "the property, government, or affairs of the city... or the official conduct of any officer or employee." (350 US 551, 1956, p. 552) Incidentally, Section 903 was not strictly an anti-communist measure – it was initially instituted in 1936 after police and other city officials refused to testify in the corruption trial of New York City Mayor Jimmy Walker.

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<sup>33</sup> See *Slochower v. Board of Higher Education of New York City* (1956), *Jencks v. United States* (1957), *Yates v. United States* (1957), *Sweezy v. New Hampshire* (1957), *Shelton v. Tucker* (1960).

In his appeal to the U.S. Supreme Court after his dismissal was upheld in New York's courts, Slochower argued Section 903 deprived him of due process. Five justices agreed and Slochower was reinstated at Brooklyn College shortly thereafter. Why the *Slochower* case didn't immediately nullify California's Dilworth Act, which also mandated the firing of public employees for invoking the Fifth Amendment, can be explained only tortuously.

According to the majority opinion written by Justice Tom Clark, the Court interpreted Section 903 as being premised on the assumption that someone who invokes the Fifth Amendment is either guilty of a crime of which they are earnestly trying to avoid incriminating themselves or is falsely invoking the Fifth and thus guilty of perjury. He wrote, "we must condemn the practice of imputing a sinister meaning to the exercise of a person's constitutional right under the Fifth Amendment." (p. 557) On the issue of due process, Clark found Section 903 extremely unforgiving:

[Section 903] operates to discharge every city employee who invokes the Fifth Amendment. In practical effect the questions asked are taken as confessed and made the basis of the discharge. No consideration is given to such factors as the subject matter of the questions, remoteness of the period to which they are directed, or justification for exercise of the privilege. It matters not whether the plea resulted from mistake, inadvertence or legal advice conscientiously given, whether wisely or unwisely. The heavy hand of the statute falls alike on all who exercise their constitutional privilege, the full enjoyment of which every person is entitled to receive. (p. 558)

While these seem like issues that the Court might also take with a law such as Dilworth – that invoking the Fifth is taken as evidence of guilt and grounds for dismissal – another case heard by the Court a few years later, *Nelson v. County of Los Angeles*, clarified the differences between

Section 903 and California's scheme, as identified by Justices Clark and Frankfurter, the two justices on the side of the majority in both cases.<sup>34</sup>

### *Nelson*

In 1960's *Nelson v. County of Los Angeles*, petitioners Thomas Nelson and Arthur Globe were social workers employed by LA County; they had invoked their Fifth Amendment rights at a HUAC hearing in Los Angeles in May of 1956 and were subsequently fired per the Dilworth Act's sister legislation the Luckel Law, which extended Dilworth to all public employees in the state. Nelson was fired following a cursory hearing; as a probationary employee, Globe was fired summarily.

Justice Tom Clark authored the *Nelson* opinion as well, and clarified that it was the automatic "inference of guilt, derived solely from a Fifth Amendment claim," that the Court had held to be arbitrary and unreasonable in *Slochower*. In *Nelson*, he wrote,

...the test here, rather than being the invocation of any constitutional privilege, is the failure of the employee to answer. California has not predicated discharge on any 'built-in' inference of guilt in its statute, but solely on employee insubordination for failure to give information which we have held that the State has a legitimate interest in securing.

(362 US 1, 1960, p. 7)

Thus the major difference making *Slochower*'s firing in New York unconstitutional and Nelson and Globe's firing in Los Angeles constitutional, according to the majority, was the intermediary step written into California's law that deemed the act of refusing to testify in front of an

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<sup>34</sup> Clark and Frankfurter were joined by Justice Harlan as well as two justices appointed after *Adler* had been adjudicated, Whittaker and Stewart. Chief Justice Earl Warren recused himself from the *Nelson* case as he had signed the California legislation in question into law as governor.

investigative committee *insubordination* – public employees were not dismissed for invoking the Fifth Amendment, they were dismissed for insubordination due to their refusal to testify, regardless of their reasoning. Sometimes employees were afforded perfunctory hearings before their dismissal, and sometimes not, as in the case of Arthur Globe, or substitute teachers Helen Hughs and Charles Sassoon.

The Court’s reasoning gives the impression of a *Highlights Magazine*-style spot-the-difference exercise where the exact same image was accidentally printed twice but a printing error resulted in a tiny smudge on one of the images and the Court squinted at that smudge and proclaimed, “found it!” But in fact, the language Harold Kennedy used in drafting the LA Board of Education rules, the Dilworth Act, and the Luckel Law was not accidental – quite the opposite. Kennedy had studied the Court’s opinion in *Adler* and made very deliberate choices about the language included in his proposals. And he chose *wisely*.

Distinctive verbiage aside, the practical applications of the laws in New York and California were indistinguishable – if a public employee invoked the Fifth while being questioned about their communist ties, either in New York or in California, they would be fired. It was the *appearance* of due process in the California law, however flimsy that process may be in practice, that was necessary for the Court to consider the law constitutional. Consider this visual representation of the difference:

**Plead the Fifth → Fired = Bad**

**Plead the Fifth → “Insubordination” → Fired = Good**

As Justice Brennan argued in his dissent, co-signed by Douglas,

The [*Slochower*] case involved an inference of unfitness for office... drawn arbitrarily and without opportunity to explain, from the assertion of the [Fifth Amendment]

privilege. The same is involved here, and the thin patina of ‘insubordination’ that the statute encrusts on the exercise of the privilege does not change the matter. (p. 14)

## **ACADEMIC FREEDOM REVISITED**

The string of losses suffered by academic freedom proponents across the country came to an indisputable end in 1961, however, with the U.S. Supreme Court ruling unanimously in favor of a Florida public school teacher who defied that state’s oath in *Cramp v. Board of Public Instruction of Orange County*. This was followed by a 1964 ruling, seven-to-two in favor of faculty and staff at the University of Washington in *Baggett v. Bullitt*. In both of these cases the court found the oaths unduly vague or lacking means of objective measurement. In their vagueness, the Court ruled that the oaths in question limited the due process of signees and potentially served to deter the free exercise of First Amendment freedoms.

### *Keyishian*

Then in 1967 the Court took up another loyalty oath case, this one from New York State, *Keyishian v. Board of Regents of the University of the State of New York*. In 1962, the faculty and staff of the private University of Buffalo became employees of New York State when the university was acquired by the State University of New York system, a move championed by Governor Nelson Rockefeller. State employees were still obligated to sign a loyalty oath as prescribed by the Feinberg Law – the law at the center of the original *Adler v. Board of Ed* case of 1952. Five employees of the former University of Buffalo refused to sign the oath in 1963, including Harry Keyishian, who had witnessed the impact of loyalty purges as a student at

Queens College in the early 1950s and had since served in the Navy and earned a PhD at New York University, joining the English department at the University of Buffalo in 1961.

The plaintiffs alleged that the Feinberg Law<sup>35</sup> was overly broad, vague, and an infringement of their First Amendment rights as a bill of attainder – a legislative act that designates a person or group of people or entity to be guilty of one thing or another, and imposes some sort of extrajudicial punishment. Bills of attainder are expressly forbidden in the Constitution – Article I, Section 9, Clause 3 reads, “No Bill of Attainder or ex post facto Law shall be passed.”

The plaintiffs asked the Warren Court to reconsider its previous position from *Adler* regarding barriers to public employment that effectively denied people their First Amendment rights. As Richard Lipsitz argued while presenting the *Keyishian* plaintiffs’ case against *Adler*, “the doctrine that ‘if you don’t like what you have to do in order to become employed by the state you can go elsewhere’ is no longer, we think, the law” as expressed in *Baggett* and other recent cases. (*Keyishian* oral argument, 1966)

The Court found narrowly, five-to-four, in favor of the SUNY Buffalo faculty who had been fired for refusing to sign New York’s Feinberg oath. They held that the government could regulate First Amendment rights only with “narrow specificity” and that the slate of anti-communist laws in New York was vague and broad. Justice William Brennan wrote for the majority,

Constitutional doctrine which has emerged since [the *Adler*] decision has rejected its major premise... that public employment, including academic employment, may be

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<sup>35</sup> Actually they were challenging a slate of administrative laws, including Sections 3021 and 3022 of the New York Education Law, Section 105 of the New York Civil Service Law, and Section 244 of Article XVIII of the Rules of the Board of Regents of the State of New York, but for the purposes of brevity I shall refer to them collectively.

conditioned upon the surrender of constitutional rights which could not be abridged by direct government action. (385 US 589, 1967, p. 605)

Brennan's opinion cautiously paid tribute to William O. Douglas's dissent in *Adler*. Justice Minton had clearly established in *Adler* that the court considered depriving teachers their free speech entirely fair as a prerequisite to employment:

It is clear that such persons have the right under our law to assemble, speak, think and believe as they will... It is equally clear that they have no right to work for the State in the school system on their own terms... They may work for the school system upon the reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere. Has the State thus deprived them of any right to free speech or assembly? We think not. (342 US 485, 1952, p. 492)

And in Douglas's *Adler* dissent, the justice warned of the effect that such anti-communist legislation had in eroding the liberties contained in the First Amendment.

The public school is in most respects the cradle of our democracy. The increasing role of the public school is seized upon by proponents of the type of legislation represented by New York's Feinberg law as proof of the importance and need for keeping the school free of 'subversive influences.' But that is to misconceive the effect of this type of legislation. Indeed the impact of this kind of censorship on the public school system illustrates the high purpose of the First Amendment in freeing speech and thought from censorship. (p. 508)

Brennan's *Keyishian* brief echoed this sentiment.

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. (385 US 589, 1967, p. 603)

Brennan's opinion celebrated the importance of academic freedom and addressed specifically the possibility of a "chilling effect upon the exercise of vital First Amendment rights" when teachers were faced with vague, overbroad proscriptions of their speech and associations.

Justice Clark authored the dissenting opinion, and conveniently summarized the lamentable position of anti-communists after the majority had ruled:

It is clear that the Feinberg Law, in which this Court found 'no constitutional infirmity' in 1952, has been given its death blow today. ... And, regardless of its correctness, neither New York nor the several States that have followed the teaching of *Adler v. Board of Education*... for some 15 years, can ever put the pieces together again. No court has ever reached out so far to destroy so much with so little. (p. 622)

*Adler*, as law, was no more. On January 31, 1967, an op-ed by conservative columnist James J. Kilpatrick ran in the Los Angeles Times that proclaimed the effect of *Keyishian* "will be to make it infinitely more difficult for colleges and universities to protect themselves, and their students, from teachers who willfully advocate anarchy and violence." (LAT 01/31/1967)

## MEANWHILE IN LOS ANGELES

### *Vogel v. LA County*

Though the Dilworth Act had largely fallen out of use by the late '50s, in the wake of the *Keyishian* decision, the California Supreme Court was forced to revisit its past decisions



upholding various loyalty oath legislation. In another matchup between LA County Counsel Harold Kennedy and ACLU attorney A.L. Wirin, the California Supreme Court nullified the state's Levering Oath in *Vogel v. County of Los Angeles*. In light of *Keyishian*, the state's Supreme Court ruled in a six-to-one decision in December of 1967 that the loyalty oath was unconstitutional based on the broad restrictions it placed on the First Amendment rights of public employees. Justice Raymond Peters wrote for the majority:

When government seeks to limit [First Amendment] freedoms on the basis of legitimate and substantial governmental purposes, such as eliminating subversives from the public service, those purposes cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved (68 Cal.2d 18, 1967, p. 22)

#### *Ball v. LA Board of Education*

Alice Ball was a student at Los Angeles City College who had applied for a summer clerical position at the school in 1967. When Ball refused to answer questions about whether she had been a member of the Communist Party her application was denied. A.L. Wirin and the ACLU again took the case, ultimately forcing the Los Angeles Board of Education to repeal its requirement that employees answer specific questions about the Communist Party and part of its oath, which had remained largely unchanged since Harold Kennedy had first drafted it in 1952.

As of April 21, 1969, Los Angeles teachers no longer needed to answer for their communist ties or sympathies or fear reprisal for not doing so.

## **ENDGAME**

Though it was only fully operational for a few years, the Los Angeles teacher purge claimed the livelihoods of dozens if not hundreds of educators. The estimates of how many jobs were lost are absurdly varied for two discernible reasons. One, the California Un-American Activities Committee played up the numbers to give the impression that the Committee's work was necessary, while the Los Angeles Board of Education downplayed the numbers so as not to appear that they had at one point employed hundreds of subversive teachers busily indoctrinating Angeleno children.

The second major hurdle to properly estimating the toll of the purge is due to the variety of ways teachers were deprived their employment – very few were fired as publicly as Eisenberg and Wilkinson or Abe Minkus and the other early cases. After the early purge victims' appeals had failed and the Teachers' Defense Committee had disbanded, the firings were neither receiving publicity nor being fought with particular vigor. Further, rather than outright dismissal, some probationary teachers simply did not have their contracts renewed. Other teachers resigned, some upon being called to testify about their communist ties, others because of the general atmosphere of distrust and limited academic freedom. And then of course there is the truly immeasurable number of people who chose not to apply to be public school teachers in Los Angeles lest they be subjected to anti-communist fervor.

## **REINSTATEMENT PUSH**

In 1977, Serrill Gerber and Abe Minkus began engaging in dialogue with the Los Angeles Board of Education through LA County Counsel John Larsen and Deputy County

Counsel Richard Mason, requesting information on their possible reinstatement as teachers in the district.

The two teachers, still close friends all these years after testifying at the HUAC hearing that got them both fired, were made aware of the possibility of reinstatement after reading an article in *The Nation* magazine written by one Irving Adler titled, “New York’s Subversive Teachers.” (Adler and Zelman 1977) Adler, of *Adler* fame, had been reinstated by the New York Board of Education 25 years after his termination had set the precedent for the many firings to follow. In his more recent suit against the Board of Ed, Adler had cited a 1971 case out of California, *Monroe v. Trustees of the California State Colleges*, in which a San Francisco State College professor who was dismissed for refusing to sign the Levering Oath in 1950 had won his case for reinstatement after the 1967 *Vogel* decision had invalidated the oath.

Despite the growing amount of case law in the teachers’ favor, Los Angeles County declined Gerber and Minkus’s request for reinstatement and rejected any suggestions that the Board of Education was liable for potentially decades of back pay for the teachers.

By May of 1980, the dialogue had turned litigious, and Gerber and Minkus had been joined by four other members of the erstwhile Teachers’ Defense Committee, now 25 years defunct: Frances Eisenberg, David Arkin, June Sirell, and Minna Cooper. In September of 1980, sensing their case against reinstatement was less than certain, the County offered all six teachers positions in the school district’s substitute teacher pool, also possibly in an attempt to mitigate the cost of back pay for the teachers. This offer was declined. A year later, in June of 1981, Superior Court Judge Vernon Foster directed the school district to reinstate the teachers at the level they would be entitled to given their certifications, skills, and experience, but Foster declared that the firings had been legal, and even though the Dilworth Law had stopped being

enforced after *Keyishian*, the teachers were entitled only to back pay from the time they had requested reinstatement.

Both parties appealed this decision, but ultimately the teachers and the Board of Education agreed on a settlement – the teachers would split \$200,000 among them,<sup>36</sup> largely according to when they requested reinstatement; one teacher, June Sirell, had chosen to accept the offer of reinstatement some months earlier and was already teaching again; the other five teachers would be reinstated, one posthumously, while the surviving four would immediately resign in good standing.<sup>37</sup>

The Los Angeles Times published an editorial on November 8, 1982, shortly after the settlement was reached, saying, without so much as a hint of irony, that it “put an end to a shabby little episode of the McCarthy era,” making no mention of the paper’s own complicity in the teachers’ long ordeal. (LAT 11/08/1982)

And with that, one *shabby little episode of the McCarthy era* had indeed come to a close. Was it a satisfying end? Not particularly. Did the perpetrators of so much harm against progressive teachers in Los Angeles face any kind of sanction? Not a one. But did five teachers, punished for defending their Constitutional rights, get a small sum of money 30 years later? Yes they did.

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<sup>36</sup> Equal to roughly \$570,000 in 2021.

<sup>37</sup> David Arkin had passed away in October of 1980, but his estate, represented by his wife Bea Arkin, remained a plaintiff in the case and still received Arkin’s cut of the settlement.

## CONCLUSION

I mentioned previously the difficulty of properly estimating how many people were directly affected by the Los Angeles teacher purge due to the range of figures offered by CUAC and the Board of Education. In April of 1953, the LA Times reported that Superintendent Stoddard and CUAC counsel Richard Combs “discussed evidence of Communistic activities among about 100 of the board’s 29,000 employees.” (LAT 04/30/1953) A couple months later, Stoddard was reported saying the committee had shared only 30 names with the Board, including the six who were already suspended. (LAT 06/09/1953) By that November, Superintendent Stoddard noted at a Board of Ed meeting that 304 individuals had been investigated, and of those 48 had been terminated or resigned. (Board of Ed meeting minutes, Nov. 1953, LAUSD Collection) A month after that, Stoddard was quoted referring to 171 “suspected left-wingers” targeted for dismissal. (LAT 12/17/1953) And years later, in CUAC’s 1957 report, Richard Combs reported that 1,759 subversive teachers had been investigated, and “About three hundred employees have been discharged or have resigned from the Los Angeles City School System for loyalty reasons.” (CUAC 9, 1957, p. 164)

Relatively early on in the course of researching this project I abandoned the idea of trying to determine exactly how many teachers had been fired during the purge. I was in the process of developing a list that included more than 150 Los Angeles teachers’ names found among the index card files of the California Un-American Activities Committee and the records of the Teachers’ Defense Committee when two things became clear. One, confirming whether and how each of these individuals had been affected by the progressive teacher purge would be impossible barring a miracle – I dreamed of stumbling upon a box in the LA Board of Ed archive labeled *All of the Red Teachers Fired*, but alas, no such collection ever materialized. And two, the *number*

wasn't the story. No number would properly reflect the harm that was done or the convoluted legal processes required to inflict it.

The number of fired teachers might be a nice detail, but a number couldn't illustrate the chilling effect the LA Board of Ed's actions had on would-be teachers who self-selected out of the field of education and, importantly, the many teachers who *weren't* fired but who lived in fear of losing their jobs if they taught certain subjects the wrong way or if they dared to advocate for racial equality within earshot of the wrong person. Richard Combs claimed that morale was high and "an atmosphere of refreshing calm has prevailed." (CUAC 9, 1957, p. 164) But teachers who lived through the purge describe it differently. Frances Eisenberg said teachers were "fearful of losing their jobs if they said anything out loud," (Eisenberg oral history) and Florence Sloat, who wasn't dismissed until 1961, agreed, saying, "teachers were afraid to open their mouths." (Sloat oral history)

It is challenging to inspire the leaders of tomorrow while biting your tongue. The effects on a generation of students who were deprived of the diversity of opinion that was actively suppressed by the Los Angeles Board of Education are unmeasurable, but hardly an insignificant consequence of the teacher purge.

And then there are the effects of the purge on the progressive social movement. Some are unknowable, many are beyond the scope of this dissertation, but at least one is clear and relevant to this story. A progressive teachers' union cannot function if you fire all of the progressive teachers. The Los Angeles Federation of Teachers was forced to disband in 1956 when most of its leadership had been fired and blacklisted from teaching in the public schools; new prospective members were scared off from joining, lest they become the next victims of the Board. Teachers who wanted to unionize were left with the AFT Local 1021, the official replacement of the Local

430, which Frances Eisenberg once described as a “pork chops union... ignoring the basic big questions of education” like educational equity in favor of economic benefits for teachers.<sup>38</sup> (Eisenberg oral history) Thus, a champion of racial equality was silenced, replaced with a much-restrained advocate for higher teacher pay.

Whether all of these effects were intended by California’s anti-communist crusaders probably depends on the particular crusader, but these effects surely weren’t *unwelcome* to most of the anti-communists, whether intentional or inadvertent.

Certainly the destruction of the teachers’ union was an overt goal for CUAC. Combs disparaged the LA Federation of Teachers as “constantly agitating, sending pressure groups to public meetings, propagandizing, operating picket lines, and otherwise performing a long series of disruptive activities calculated to further the Communist Party line and to intensify the class struggle.” (CUAC 9, 1957, p. 152) In other words, union activism?

There were those who *used* the anti-communist moral panic for political purposes, from Jack Tenney’s performative stunts to Earl Warren’s reelection ploy. And there were those who stoked the anti-communist moral panic out of earnest confidence in the justness of their cause, like Dick Combs, who demanded a kind of militant conformity, such that “sending pressure groups to public meetings” was seen and offered as evidence of subversion rather than as participation in democratic processes or an activity that is protected by the First Amendment. This is not to say Tenney and others who used anti-communism for its political symbolism did not believe in the cause, some did and some probably didn’t, but the exploitation of the moral panic adds something of a wrinkle to theoretically situating the LA teacher purge and anti-communism more broadly.

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<sup>38</sup> The Local 1021 was rebranded as the United Teachers of Los Angeles in 1970.

## THE ANTI-COMMUNIST MORAL PANIC

An important component to Cohen's original theorization of moral panic was the *symptomatic* quality of the deviance in question – that it was not just about the one disturbance, but that the issue is a symptom of something else, a greater threat to established values. (Cohen 2002, p. 62) It is clear that the anti-communist moral panic was about more than concern over subversive elements within the nation's borders. One thing that makes the case somewhat confounding is that institutional anti-communism was not fundamentally about what its most successful perpetrators said it was about publicly or what many Americans probably *thought* it was about.

The California legislature authorized the California Un-American Activities Committee in 1941 to investigate the potential for various groups to interfere with national defense, but in its first published report Committee Chair Jack Tenney made clear that the challenge was greater than rooting out subversives. Tenney wrote,

It should be remembered that we can *win* the war and *lose* our democracy through short sightedness. If we are to win the war but retain our democracy, then we must know not only the enemy we fight with guns but the enemy we fight with ideas; we must know his strategy and the weapons he uses against us. The fanatical fighting zeal of the subversive enemies within our midst must not only be met with equal zeal but must be surpassed in faith for our democracy and our form of government....We need a *fighting faith* for our Democracy, our Constitution and our way of life. (emphasis in original, CUAC 1, 1943, p. 11)



As Cohen writes, “Successful moral panics owe their appeal to their ability to find points of resonance with wider anxieties.” (2002, p. xxxvii) Undoubtedly for anti-communism, some of these anxieties were directly related to the possibility of imminent war with the Soviet Union and concerns about communists’ sympathies toward that enemy (and nuclear-weapon state as of 1949).

Communist Party membership peaked at about 75,000 in 1947, dropping precipitously as the Red Scare took hold, with fewer than 40,000 members nationwide in 1950, according to Communist Party records. But anti-communist sentiment kept growing in the early 1950s in concert with the Korean War. When the pollster Gallup asked respondents to rate how they felt about communism on a sliding scale, the lowest possible choice was the majority answer by a landslide: 78 percent in 1951, 81 percent in 1952, 89 percent in 1953, and 94 percent in 1954. (White 1998) Many disturbing polls reveal the public’s disdain for communists during this period; one Gallup poll in 1950 found 13 percent of respondents agreeing with the idea that communists in the U.S. should simply be executed.

What can be made of the public’s visceral reaction to the very existence of communists in America, despite communists’ low numbers and generally benign actions? Many people were reacting less to any actual state of affairs than to the one being sold to them by anti-communist crusaders. As Murray Edelman contended, politicians were constructing public opinion with their rhetoric, “shaping the cognitions of large numbers of people in ambiguous situations.” (Edelman 1971, p. 7)

We can’t know for certain the sincerity with which each anti-communist crusader approached their cause. But we can compare and contrast their words with their actions, and the arguments that anti-communist crusaders made in public were frequently revealed to be cover for

their true targets, people who, far from trying to *overthrow* the government, were trying to work *with* and *within* the government, work *with* and work *as* elected and appointed officials to racially integrate schools and housing and the workplace, among other contemptible policy positions around fair wages and the like.

The stakes outlined by anti-communists in public – that communism in the United States was a threat to democracy and communist teachers would indoctrinate America’s children and teenagers into overthrowing the government – might have held up in court, but they fall apart under minimal scrutiny. It was the tacit interests – quashing a growing labor movement, slowing racial integration, and maintaining the status quo in the interest of elite stakeholders – that the anti-communist movement served best.

In this sense, anti-communism found points of resonance with wider anxieties, just not always the ones they were selling publicly. However, the ones they were broadcasting afforded them the power and popular support to act on the other anxieties.

So in the anti-communist moral panic equation, what is the *symptomatic* quality of the deviance – in this case communism? Was communism in America a symptom of global threats to democracy? Or was it really a symptom of progressive ideology that made the good old boys in charge uncomfortable? On its face, the anti-communist moral panic was about the former. Anti-communist crusaders were fighting for democracy. In reality, the anti-communist moral panic was exploited by political actors and true believers alike, in service of protecting a racist, classist social order.

The moral panic theory is useful in conceptualizing anti-communism, but without digging deeper, it would be easy to conclude that the anti-communist moral panic was *just* about the things that the anti-communists said it was about, because indeed what got *most* people hot and

bothered is that they believed communists posed a threat to the security of the nation, to democracy, and maybe a bit to normative ideologies about the superiority of capitalism, because that's what they were told by their elected representatives. The latter indictment contains a kernel of truth, though I would argue that American communists were not as anti-capitalist as their Soviet and European counterparts. But the fact remains that American communists were not in favor of fascism, they were committed to working within the confines of the American democratic system and posed little threat to national security, rather they threatened the ideological supremacy of those currently in power.

### *The Death of the Anti-Communist Moral Panic*

The anti-communist wave was stunted in the mid-1950s by several converging forces. Institutionally, the Supreme Court, under Earl Warren's chiefdom, issued a number of rulings that limited several of the more egregious anti-communist measures (see *Peters v. Hobby* 1955, *Pennsylvania v. Nelson* 1956, and *Jencks v. U.S.* 1957), including issuing four rulings against anti-communists on one day in June of 1957 that came to be known as Red Monday (see *Yates v. U.S.*, *Sweezy v. New Hampshire*, *Service v. Dulles*, and *Watkins v. U.S.*). This was in addition to the Court's imposing of some pretty significant changes to the social order, tackling segregation policies and anti-miscegenation laws. Though impressively forward-thinking, the Supreme Court was not operating in a vacuum.

The social and political culture in America was shifting away from the conservative revival that had begun two decades earlier. The Korean armistice and death of Joseph Stalin in 1953 made it more difficult to imagine Soviet expansionism as the imminent threat that many had feared. The Democratic Party won a majority of both houses of Congress in 1954, shaking

off allegations of communist sympathies, and increased their majorities in 1958, ushering in the period of Cold War liberalism that allowed modest growth in the welfare state and the expansion of civil rights for Blacks. As Americans' attention shifted elsewhere, the news media also moved away from covering communism in the alarmist way they had previously.

Red-baiting was beginning to lose its bite by the late 1950s. Joe McCarthy had effectively taken it to its extreme limits in 1954 by using his Senate committee to investigate the U.S. Army for a communist infiltration that he could not substantiate with evidence, eventually earning him a censure by the Senate. McCarthy's effect on the national anti-communist movement rather eerily mirrored Jack Tenney's run in California, and without a capable guardian like Hugh Burns to take over the national anti-communist mantle, it could not withstand the progressive pressures that were taking hold. Communists were still widely reviled, to be sure, but were not regarded as a threat to national security so much as agitators in the civil rights movement and anti-war protests, a label many communists would have no doubt borne proudly.

And so the anti-communist stalwarts that continued operating into the late-1950s and early '60s, including those in California, did so without the mandate of national security to support them, revealing some of their formerly tacit motivations, as "McCarthyist" became synonymous with *reactionist*. In the 1960s, Hugh Burns and Richard Combs turned their attention toward the Delano Grape Strike and other organized labor efforts, the Free Speech Movement at UC Berkeley, and various civil rights groups, but were forced to downgrade CUAC to a subcommittee of the Senate Research Committee, which enabled them to hold meetings privately and avoid certain financial disclosure rules.<sup>39</sup>

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<sup>39</sup> The California Un-American Activities Committee was not officially shuttered until shortly after Hugh Burns retired from the senate in 1970. When James Mills took over as senate president pro tem he assumed the chairmanship of CUAC, but dissolved the committee upon learning that he had been a subject of investigation after

The anti-communist moral panic was not just transitory fear, though, it was not just sentiment. It manifested in very concrete ways for a lot of people. Some of the most consequential actions of anti-communist crusaders were focused on low-level civil servants fighting for better working conditions and advocating for progressive racial policies.

## PROCESS

California's anti-communist crusaders tapped into racial and class conflict, but as this story illustrates, a feat such as the Los Angeles teacher purge was not accomplished simply by stoking fear, it was done through legal processes.

### *Legislative Investigation*

The first of these processes was legislative investigation, a duty of the legislative branch dating from the 1792 St. Clair investigation, debated again by the U.S. Senate in 1859 following John Brown's raid on Harpers Ferry,<sup>40</sup> and officially upheld in the wake of the Teapot Dome Scandal by the Supreme Court in the 1927 case *McGrain v. Daugherty*, in which the Court held that Congress had the power to compel witnesses to appear and provide testimony, affirming "the power of either house to conduct investigations and exact testimony from witnesses for legislative purposes." (273 US 135, 1927, p. 172)

It was in the *McGrain* case that the Court effectively established the extremely generous *presumption* that investigative committees of Congress are authorized with *legislative* purposes in mind – if the subject of the investigation *could* be legislated on, then a committee is within its

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he and many other coastal representatives had attended an event sponsored by the longshoreman's union years earlier. Thus ended the California Un-American Activities Committee.

<sup>40</sup> The Senate voted 44-to-10 in favor of their own ability to compel witnesses to testify in investigative hearings.

right to investigate, including compelling testimony from witnesses. Justice Van Devanter wrote for the majority,

We must assume, for present purposes, that neither house will be disposed to exert the power beyond its proper bounds, or without due regard to the rights of witnesses... The only legitimate object the Senate could have in ordering the [Harpers Ferry] investigation was to aid it in legislating; and we think the subject-matter was such that the presumption should be indulged that this was the real object. (p. 176)

State and federal courts subsequently relied on this interpretation to afford legislatures great leeway in their investigative pursuits, including CUAC's own contribution to the case law, *Tenney v. Brandhove*, in which the Court ruled that investigation need not even serve a legislative function per se, but that the legislature must not be doing the job of another branch of government: "To find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive." (341 US 367, 1951, p. 378)

It was these practically limitless powers to investigate to no discernable end, untethered from the constraints of the justice system, that legitimized California anti-communists' punishment of progressive teachers. In the capable hands of Hugh Burns and Richard Combs, CUAC wielded its investigative apparatus on behalf of the Los Angeles Board of Education, not in service of legislation. If a legislative purpose for this particular use of their investigative powers had to be identified, beyond *potentially* being used to inform future legislation, it could be argued that CUAC investigated LA Board of Ed employees in support of enforcing legislation that had already been passed, the Dilworth Act; but it is worth noting that the committee never

attempted to author any anti-communist legislation in the 17 years it continued to operate after the Dilworth Act's passage in 1953.

### *The Doctrine of Adler*

And then of course there was the star of the show, the judiciary's endorsement of the doctrine that public sector employees could be subject to violations of their civil liberties – that certain constitutionally protected freedoms simply did not apply to government employees. It is difficult to adequately express how egregious the *Adler* decision was, to deny teachers the freedom to hold certain values and to belong to a group that held those progressive values, a group that was pretty obviously not trying to overthrow the government, despite the protests of anti-communist crusaders and, consequently, public opinion.

The courts examined the Feinberg Law and laws like it, such as California's Dilworth Act, and pointed to the findings that the legislatures had established about the threat of communism that were included within the text of these laws – that all communists advocated overthrowing the government, that they had infiltrated the public sector, that they were disseminating communist propaganda in schools, that said propaganda was often too subtle to be discerned or prevented by existing means, and thus new laws needed to be established to prevent all communists from retaining public employment.<sup>41</sup> And they accepted these findings as fact –

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<sup>41</sup> From *Adler*: “The preamble of the Feinberg Law, § 1, makes elaborate findings that members of subversive groups, particularly of the Communist Party and its affiliated organizations, have been infiltrating into public employment in the public schools of the State... As a result, propaganda can be disseminated among the children by those who teach them and to whom they look for guidance, authority, and leadership. The Legislature further found that the members of such groups use their positions to advocate and teach their doctrines, and are frequently bound by oath, agreement, pledge, or understanding to follow, advocate and teach a prescribed party line or group dogma or doctrine without regard to truth or free inquiry. This propaganda, the Legislature declared, is sufficiently subtle to escape detection in the classroom; thus, the menace of such infiltration into the classroom is difficult to measure. Finally, to protect the children from such influence, it was thought essential that the laws prohibiting members of such groups, such as the Communist Party or its affiliated organizations, from obtaining or retaining employment in the public schools be rigorously enforced. It is the purpose of the Feinberg Law to provide for the disqualification

that membership in the Communist Party USA meant advocating sedition, that propaganda that was too subtle to identify was also a great threat to democracy, and that there was no other recourse for stopping this assault than to fire those suspected of communist sympathies.

It is fair to ask why the Court didn't scrutinize these claims, which were lacking in evidence and logically flawed. *How could indoctrination be both too subtle to detect and so persuasive as to pose an imminent threat to national security?* is an example of a question that was not asked by the majority in the *Adler* hearings. I think the obvious answer here is also the right one – the majority in *Adler* did not scrutinize the claims made by the anti-communists because they did not want to. It was not in their interests to do so. They may have believed every terrible thing said about communists, but even if they didn't, they lived in a society that viewed communism with great hostility and to deny the anti-communists this disciplinary tool was not viable under these broader cultural circumstances.

The Court framed the doctrine of constitutional limitations on public employees as fitting within the state's general obligation to determine a teacher's fitness to teach, and in so doing consider "the organizations and persons with whom they associate." In *Adler*, the Court decided that disqualification from public employment due to membership in an organization the state deemed subversive did not deny someone the right to free speech and assembly. Minton wrote,

His freedom of choice between membership in the organization and employment in the school system might be limited, but not his freedom of speech or assembly, except in the remote sense that limitation is inherent in every choice. Certainly such limitation is not

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and removal of superintendents of schools, teachers, and employees in the public schools in any city or school district of the State who advocate the overthrow of the Government by unlawful means or who are members of organizations which have a like purpose." (342 US 485, 1952, p. 489)



one the state may not make in the exercise of its police power to protect the schools from pollution and thereby to defend its own existence. (342 US 485, 1952, p. 493)

This logic was then extended to other restrictions placed on public employment, as seen in *Nelson v. County of Los Angeles*, such as refusing to answer questions about your past Communist Party membership, as long as there was an intermediary step between the deprivation of civil liberties and the termination of employment that gave the appearance of due process. And like that, states and municipalities could force employees to choose between their job or their civil liberties.

As we know, *Adler* was reversed in 1967 with *Keyishian*. In 1968, the Court acknowledged the need to strike “a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” (391 US 563, 1968, p. 568) Laying out what came to be known as the Pickering test, the Court established certain factors to consider in cases where a teacher’s speech resulted in their termination, largely focusing on whether the subject matter of the teacher’s speech was of public concern, which they continued to clarify in subsequent cases. (see *Mount Healthy City School District Board of Education v. Doyle* 1977, *Givhan v. Western Line Consolidated School District* 1979, *Connick v. Myers* 1982, and *Garcetti v. Ceballos* 2006)

But between 1952 and 1967, the U.S. Supreme Court aided and abetted in the establishment of an extraordinary new legal framework allowing states and municipal governments to punish teachers for their convictions. This legal framework was born of fear, bolstered by public opinion that was rooted in a lie. The widespread majority-held beliefs about

the threat of American communists were the result of anti-communist crusaders whose motivations were revealed to be racist, classist, and political, not patriotic.

### **WAS THE PURGE A ONE-OFF?**

The Court's acceptance of anti-communist logics during this time period is alarming, and raises questions about what protections exist to prevent such an assault on the constitutional rights of any particular group again.

#### *The Public*

One such protection, as suggested by the Court in *Tenney v. Brandhove*, is the electorate. As Justice Frankfurter wrote, "Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses." (341 US 367, 1951, 378) But after the Levering Act and Dilworth Act were passed, the perpetrators of the purge and those who helped establish its legal framework were rewarded – Earl Warren, in particular, was not only reelected handily but appointed to the Supreme Court.<sup>42</sup> Sure partisan waves ebb and flow, and over time the trend toward the expansion of civil rights in the U.S. is clear enough, so eventually we can expect to see rights that have been limited reformed, but by all indications the electorate is not a reliable defense against those who would limit civil liberties, certainly in the short term.

Justice Douglas offered these hypothetical scenarios in response to Frankfurter's suggestion that "self-discipline and the voters" should preclude legislative overstepping:

May they depart with impunity from their legislative functions, sit as kangaroo courts, and try men for their loyalty and their political beliefs? May they substitute trial before

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<sup>42</sup> This is to say nothing of his tenure on the Supreme Court, where he became a champion of civil rights.

committees for trial before juries? May they sit as a board of censors over industry, prepare their blacklists of citizens, and issue pronouncements as devastating as any bill of attainder? (341 US 367, 1951, p. 382)

As the voters of California and across the nation during the anti-communist moral panic proved, the answer to each of Douglas's questions is yes. Legislators may do any of these things with impunity and little risk of electoral consequences.

The idea that the electorate will prevent abuses by overzealous legislators ignores more issues than I can reasonably devote space to here, but they include (1) any given legislator needs only appeal to a majority or plurality of their state or district to hold their office, (2) that group of people may well be in favor of the abuse, (3) the electorate may be artificially limited by voter suppression efforts aimed at the people who are otherwise subjected to abuse by officeholders, (4) voters do not decide who gets to serve in leadership positions within legislative bodies, (5) the U.S. Senate is inherently un-democratic. Throughout this nation's history, voters have elected and reelected legislators who exploit their investigative powers for political retribution and use their legislative powers to limit or attempt to limit the rights of minorities.

### *Statutory Law*

Statutory law could ostensibly protect groups and individuals from the overreaches of elected and appointed officials, but suffers from issues related to those above. Who writes the statutes? Who passes the laws? The very legislators who might wish to limit one's civil liberties. It would be naïve to expect legislators guilty of abusing their investigative and legislative powers to turn around and voluntarily limit their ability to do that or offer legal protections to people who are vulnerable to their abuses.

Historically, statutory law has been extremely *reactive* on civil liberties issues. Any group that is not overwhelmingly white has tended to gain rights statutorily only after those rights have been limited or at the very least severely threatened.

### *Courts*

Another protection that might prevent such an assault on civil liberties from happening again is the case law established since *Adler*, much of which has been outlined here. Precedent arguably prevents the judiciary from reversing decisions on civil rights issues. But the Supreme Court has overruled hundreds of its own decisions. Indeed, many of the most widely celebrated cases overturned previous Court decisions. *Keyishian* overturned *Adler*; *Brown* partially overturned *Plessy v. Ferguson*; *Lawrence v. Texas* overturned *Bowers v. Hardwick*; *Obergefell* overturned *Baker v. Nelson*. Our judicial system is such that the Court has the ability to overrule itself and, fortunately for civil libertarians, these have *primarily* been in the direction of extending rights to more people and not limiting them.

But case law rests on little more than norms, tacit agreements that if the Supreme Court suddenly reversed itself on major civil rights cases it would diminish the legitimacy of the Court. The last several years have demonstrated many potential weaknesses in our democratic structures, but chief among them is that *norms* are not as indestructible as they were once perceived to be. Despite Justice Frankfurter's apparent optimism, *self-discipline* by elected and appointed officials is far from a safe bet. One particularly relevant norm broken recently was the Senate's heretofore agreed upon obligation to hold confirmation hearings for Supreme Court nominees, a development with significant consequences for the future of the Court and case law

generally. Another norm we could potentially see broken in the future is the number of Supreme Court justices, which has held at nine since 1869.<sup>43</sup>

### *Activism and the Passage of Time*

Ultimately, time is the enemy of civil rights abuses. In time, bad actors will be replaced by the electorate, leave office, or die. In time, formerly progressive ideas become moderate ones, and legislatures become receptive to ideas they once opposed. In time, courts shift toward protecting the rights of people once considered threatening. This happens through sustained activism and the normalization of new ways of thinking.

There is a natural tendency to focus on the big progressive moments – emancipation, suffrage, the Civil Rights Movement. For good reason, they are interesting and worth exploring and celebrating. But social change is often much more incremental than these momentous episodes lead many to believe. They are precipitated by years, decades, sometimes centuries of struggle, of organizing by activists, and of normalizing beliefs.

Cold comfort for those who are in the midst of struggling for their rights, perhaps, but cause for moderate optimism in the grander scheme of things, and, for those afflicted, a reason to keep fighting.

### **A CAUTIONARY TALE**

The Los Angeles teacher purge won't happen again exactly in the way that it did. But the structures of this anti-communist offensive are hardly immune to exploitation either. There are

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<sup>43</sup> Some would argue this norm was already broken when the October 2016 term began with only eight justices, a side effect of the Senate's aforementioned broken norm.

weaknesses in the legal framework established to protect Americans' civil liberties, deficiencies that the architects of the teacher purge understood and used to their advantage.

Government officials exploited a moral panic, demonizing communists and progressive activists, gaining the public's approval for schemes to deprive certain groups of their civil liberties, groups whose behavior was by all accounts far removed from the extreme threats to national security that were described by anti-communist crusaders. The Court in *Adler* gave those elected and appointed officials a blueprint for violating teachers' civil liberties, and they demonstrated a willingness to look the other way when faced with laws that clearly deprived them of constitutionally protected rights, accepting the necessity of carving out exceptions to the Constitution for public school teachers based on unevidenced threats to national security and dressing up pre-ordained discharge hearings as *due process*.

Teachers lost their jobs and careers, those who didn't were silenced, would-be teachers opted out of the field of education, and, far from being protected from indoctrination, students were insulated from progressive thought. The Los Angeles teacher purge and the process by which it was achieved serve as a reminder of the fragility of our civil liberties. They are subject to the whims of public opinion and tenuous institutional norms. Left undefended, our civil liberties stagnate and erode. Only by challenging their abuses can we preserve our civil liberties and, by nurturing open-mindedness, perhaps even allow them to grow.

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## APPENDIX A: DATA and RESEARCH METHODS

This research is archival in nature, and demanded analyzing a great deal of primary source material. Here I catalog the resources that were available as well as the limitations of the data and research.

### DATA

#### *CUAC Archive*

I was introduced to the Los Angeles teacher purge when exploring the extensive archive of documents amassed by CUAC members, investigators, and administrators. Over the course of its 30 years of existence, CUAC's representatives collected enough records – hearing transcripts, investigative files, newspaper clippings, photographs, correspondence, and index cards detailing the committee's gathered intelligence – to fill 80 file boxes.

The records were transferred to the California State Archives in 1971 by the Senate Rules Committee. At that time, the State Senate mandated the records be sealed indefinitely, but the archive has been made accessible for research within the last two decades. The archive offers a unique behind-the-scenes perspective on an organization that touched many lives in many ways.

The committee's biennial reports, which are available for download online, were also quite useful resources. Each at least several hundred pages long, the reports detail the committee's main interests over CUAC's 30 years and constitute what is probably best described as an astounding collection of anti-communist propaganda. Because they were published every other year, though, they didn't always contain the most up-to-date information, and they were extremely unreliable sources of *facts*, despite devoting hundreds and hundreds of pages to defining every minor issue and *-ism*.

### *Southern California Library for Social Studies and Research*

The Southern California Library for Social Studies and Research is home to several collections broadly connected to the LA Federation of Teachers. In addition to lots of news clippings and court filings the collection includes various records kept by four blacklisted teachers – Frances Eisenberg, Abe Minkus, Florence Sloat, and Jean Wilkinson – as well as transcripts of a few interviews conducted by undergraduate students with Eisenberg and Sloat in the late 1970s and early 1980s, around the time their suit against the Los Angeles Board of Education was active.

The library also houses the Frank Wilkinson Papers, a collection of his writings and correspondence and news clippings mostly related to his various dealings with HUAC and the FBI as a leader in the National Committee to Abolish HUAC and its successor the National Committee Against Repressive Legislation.

### *UCLA Young Research Library Special Collections*

The Young Research Library at UCLA is home to the Los Angeles Board of Education records from 1875 to 2012, though the earlier of these records are somewhat sparse. It consists of Board meeting minutes, subcommittee reports, financial records, directories, maps, publications, and other ephemera. This collection was integral to reconstructing the timeline of the purge. While the collection is light on records relating to teachers fired after the initial cases in 1953/54, the Board's meeting minutes from those early years really demonstrated the earnestness with which the Board approached the purge; the arguments made by board members, the discussions about the language used in the rules adopted, quibbling about whether they each needed to state

whether they agreed with the findings of teacher interrogation hearings – finding this resource turned my speculations about the Board’s motivations into evidence-based theories.

The library also contains the Frances Eisenberg Los Angeles City Schools Loyalty Oath Collection, with records and news clippings and photos relating to the Canoga Park investigation, the ‘50s teacher purge, and the LA Federation of Teachers.

The oral history of CUAC Chair Jack Tenney is also located among the Special Collections. It fills more than a thousand pages spread out over four volumes and is full of the type of histrionic invective you might imagine hearing from someone who evolved from New Deal Democrat to chief anti-communist crusader to Vice Presidential candidate of the fiercely anti-Semitic Christian National Party. It was not particularly useful, but certainly painted a picture of the man.

### *Online Resources*

The Oral History Center at UC Berkeley’s Bancroft Library contains some 4,000 oral histories, the transcripts of which are publicly available on the web. I read through a fair number of these over the years working on this project, including the interviews of: Jesse Washington Carter, who served on the California Supreme Court between 1939 and 1959; Clark Kerr, former Chancellor and President of the University of California during the 1950s and ‘60s; and CUAC’s own Hugh Burns. Some other oral history contributors of interest were involved with Japanese internment in California, the Free Speech Movement at Berkeley, and various industries and labor movements. Though the histories surely reflect some imperfect memories, as primary sources they offered unique and invaluable perspectives on a host of topics directly related to the LA teacher purge and its historical context.

The searchable archives of the Los Angeles Times, available with a newspapers.com subscription, were integral to telling this story. The LA Times was a key player in the teacher purge and in every other anti-communist endeavor in the region. The California Digital Newspaper Collection was occasionally of use as well.

I used Google Scholar, justia.com, and oyez.org for exploring case law. Oyez and Justia also have transcripts and audio recordings of oral arguments for select cases presented before the Supreme Court. The audio is a gift to historians and Supreme Court enthusiasts. It's not always crisp, but it has the ability to transport the listener to another time and place in a way that written documents simply cannot. To listen to Al Wirin defend Los Angeles social workers in the *Nelson v. LA County* oral arguments, to scrutinize the interruptions of Justices Brennan and White and Stewart in *Keyishian* – reading a transcript is a poor substitute for hearing it in situ. Some day oral arguments will be videoed, but the existing audio should be forever treasured.

### *Secondary Sources*

Though the research relied mainly on primary sources, many monographs were helpful in establishing the story of the LA teacher purge. In addition to the literature contained in the preceding review and a few other works on anti-communism that helped me to contextualize the California story, biographies of Frances Eisenberg – Martha Kransdorf's *A Matter of Loyalty* (1994) – and Frank Wilkinson – Robert Sherrill's *First Amendment Felon* (2005) – provided some much appreciated background on those individuals, some of which I've included in their respective subplots.

As yet, no comprehensive historical analysis of the California Un-American Activities Committee and its social context has been conducted with the benefit of its records now

maintained at the California State Archives, but a handful of scholarly works produced before the release of CUAC's records were invaluable in reconstructing some of the committee's major operations, if not the LA teacher purge. Those scholarly works include Edward Barrett's *The Tenney Committee* (1951) and four journal articles, one by Lawrence Harper in the *California Law Review* (1951), one by Robert Pritchard in the *California Historical Society Quarterly* (1970), one by Ingrid Scobie in the *Pacific Historical Review* (1974), and the latest by M.J. Heale in the *Journal of American Studies* (1986). Additionally, the Los Angeles Times published a long-form profile of CUAC investigator Richard Combs written by Mary Ellen Leary in 1967 titled "California's Lonely Secret Agent."

Many other books that I have not specifically cited were beneficial to my own understanding of the context surrounding the events recounted in this dissertation. The list includes but is certainly not limited to: Carey McWilliams's *California: The Great Exception* (1949); James Mills's *A Disorderly House: The Brown-Unruh Years in Sacramento* (1987); Kevin Starr's *Embattled Dreams: California in War and Peace, 1940–1950* (2002); and Kathryn Olmstead's *Right Out of California: The 1930s and the Big Business Roots of Modern Conservatism* (2015).

## **PROCESS**

Many hours were spent at the State Archives in Sacramento and at UCLA and the SoCal Research Library in Los Angeles poring over documents. Early on I invested in an upright scanner that does not come into contact with the document of interest and I imagine it saved me many trips to Sacramento and the SoCal Research Library. Staff at the Young Library at UCLA

refused to allow me to use the scanner, so each time I visited the Special Collections there I left with hundreds of photos on my phone rather than the searchable PDFs my scanner produces.

With these technologies, though, I approached the collections as an unabashed digital hoarder, grabbing scans and taking photos of every single interesting looking document that I came across, with the intention of sorting out the important bits later. The result was a chaotic mess of thousands of photos and PDFs that took me ages just to organize haphazardly. There are practices I might adopt in the interest of efficiency were I to do it all again, but I believe there is probably no escaping some pain when your research involves perusing thousands of primary source documents. I was very glad to have the trove of records on my computer when the pandemic forced all of these libraries closed.

Working on my own laptop, I did my best to separate the relevant documents from the chaff. From these disparate sources, the collection I had ultimately amassed included myriad school board meeting minutes, court briefs of every major case in the teachers' saga, personal accounts from teachers involved, interrogation hearing transcripts, and all of the major news coverage of the events. These are the resources I have relied upon to reconstruct, recount, and interpret the story of the Los Angeles teacher purge as faithfully as I can.

### *Limitations*

The LA Board of Ed collection at UCLA contains nearly 2,800 boxes and because all of the collections I was interested in at UCLA were kept off-site I was required to request specific boxes several days ahead of time and limited to requesting five boxes per visit, though I managed to negotiate that number up to eight. Still, there were days when some of the eight boxes I requested did not contain what the finding aids said they should, and on those days I



usually spent more time on the freeway driving to and from UCLA than I did at the library. The point, though, is that there remains the possibility that I have missed records in this particular collection due to the size of the archive, the Young Library's restrictions on scanning and limits on requested files, and the finite amount of time I was able to spend there. I have no reason to believe any other documents that might be uncovered at this point would change the narrative, but perhaps they could have provided some nuance.

In that vein, I would like to have included more personal accounts – more in-depth interviews from all interested parties, in particular, would have given the story a bit more humanity. There is information necessarily missing from the story – from the benign, such as body language, but potentially bigger omissions, like privileged communications that possibly never existed in written form. Again, I don't believe I could discover a document at this point that would alter my analysis. And, frankly, there are also characters and incidents that I'm perfectly aware of that I have been forced to omit due to time and structural constraints. I have tried to tell a story that isn't completely unwieldy, and have had to kill some of my darlings in the process. As I predicted when I started this project years ago, the difficult task of deciding when to stop gathering information was foisted upon me by time constraints (and COVID, which I did *not* predict), and time has (fortunately) prevented me from going full Robert Caro on the writing and editing of this story as well.

Ultimately what I have produced is one case study, requisitely thorough, based on archival data. Things may have gone down differently in another city, under different circumstances, and indeed they did. But this is what happened to progressive teachers in Los Angeles.