



Carey McWilliams. Photo: Gift of Will Connell, Calif. Museum of Photography.

## The Legal Activism of Carey McWilliams

BY PETER RICHARDSON

CAREY MCWILLIAMS is not a household name, but the Los Angeles author and attorney has amassed many admirers over the years. Historian Kevin Starr called McWilliams the finest nonfiction writer on California and the state's most astute political observer. Fellow historian Patricia Limerick described him as California's preeminent public intellectual and one of "the truly ethical leaders of the American West."<sup>1</sup> Cesar Chavez recommended *Factories in the Field*, McWilliams' 1939 book about California farm labor, as "the book for the ordinary guy."<sup>2</sup> Reagan biographer Lou Cannon claimed that McWilliams "defined for Americans everywhere the mythic state of California — that extraordinary place where the moods and movements of today become the national reality of tomorrow."<sup>3</sup> In short, McWilliams may be the most influential California author that most Californians have never heard of.

1. Patricia Nelson Limerick, "Carey McWilliams: A Tribute," address delivered to the Calif. Studies Assn. meeting, Feb. 5, 1993.  
2. Peter Richardson, *American Prophet: The Life and Work of Carey McWilliams*. Ann Arbor: Univ. of Michigan Press, 2005; rpt. Berkeley: Univ. of Calif. Press, 2019, 158.  
3. Lou Cannon, "Carey McWilliams: Defined California, Defied Convention," *The Washington Post*, Jan. 28, 1979, <https://www.washingtonpost.com/archive/politics/1979/01/28/carey-mcwilliams-defined-california-defied-convention/34e70b5a-791c-495d-b9f0-41aee2733ad6/>.

Much of McWilliams' appeal can be traced to his versatility. Between 1939 and 1950, he wrote nine first-rate books and hundreds of articles, but he also headed California's Division of Immigration and Housing (DIH) and chaired the Sleepy Lagoon Defense Committee, which helped free Latino youths wrongly convicted of murder. Moreover, McWilliams inspired important work, including the Oscar-winning screenplay for *Chinatown* (1974) and Luis Valdez's play *Zoot Suit* (1979). At *The Nation* magazine, which he edited from 1955 to 1975, he asked Hunter S. Thompson to write about the Hell's Angels. That assignment led to Thompson's first bestselling book, and his literary executor later claimed that McWilliams was the only editor whom he unhesitatingly admired.

Even McWilliams' most dedicated admirers, however, have not always appreciated the extent to which McWilliams drew on his legal acumen to advocate for workers and civil liberties and against racial discrimination. On those issues and others, he rarely contented himself with critique; rather, he proposed sensible remedies for the most intractable problems of his day. When his legal activism is added to McWilliams' other accomplishments, we can see why the historian Mike Davis called him "the California left's one-man think tank."<sup>4</sup>

Born in Colorado in 1905, McWilliams moved to Los Angeles as a teenager. At the University of Southern California, he studied law and wrote for the student newspaper and literary magazine. After graduating, he joined a downtown law firm and quickly became a seasoned litigator. "One can learn a lot about a community in the courts, trying cases, examining jurors, and cross-examining witnesses," he wrote later, adding that the experience was "very much a part of my initiation into the history of the region."<sup>5</sup> Even as a busy lawyer, he kept up his writing. His first book, a well-received biography of Ambrose Bierce, appeared when he was 23.

McWilliams took his literary and political cues from his hero, H.L. Mencken, but the Great Depression radicalized him. He began to address the major civil liberties issues of the day — sometimes in court and/or on picket lines but also through his writing. He joined the ACLU

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4. Mike Davis, "Optimism of the Will," *The Nation*, Sept. 1, 2005, <https://www.thenation.com/article/archive/optimism-will/>.  
5. Carey McWilliams, *Southern California: An Island on the Land*. Layton, UT: Gibbs Smith, 1973, xiv.

and represented Mexican-American workers in a 1934 citrus strike. "I hadn't believed stories of such wholesale violation of civil rights until I went down to Orange County to defend a number of farm workers held in jail for 'conspiracy,'" he recalled. "When I announced my purpose, the judge said, 'It's no use; I'll find them guilty anyway.'"<sup>6</sup> Struck by that injustice, McWilliams began writing for progressive magazines about politics and current affairs. He also joined the National Lawyers Guild and served as a trial examiner for the newly formed National Labor Relations Board. His experience informed his first bestselling book, *Factories in the Field*, which is often described as the nonfiction version of *The Grapes of Wrath*.

The year that book appeared, McWilliams joined Governor Culbert Olson's administration as director of DIH. As usual, he maintained his literary output. *Brothers Under the Skin*, a short history of America's racial and ethnic minorities, appeared in 1942. Written in the pamphleteering tradition, it piqued racists and red-baiters in the state Legislature, and the following year McWilliams was called before the Joint Committee on Un-American Activities in California. Its chairman, Jack Tenney, grilled McWilliams on the question of interracial marriage, which was still illegal in California. McWilliams thought the law should be abolished, but because he testified in executive session, the transcript was never published. Instead, Tenney wrote that McWilliams' views on miscegenation were "identical with Communist Party ideology." The California Supreme Court struck down the ban on interracial marriage six years later.<sup>7</sup>

When serving in state government, McWilliams found himself in the middle of what he later described as "certainly the most serious violation of civil liberties in this century."<sup>8</sup> After the Japanese attacked Pearl Harbor, many politicians called for the mass removal of Japanese residents from the Pacific Coast. McWilliams' boss, Governor Olson, supported President Roosevelt's executive order to evacuate and incarcerate 110,000 Japanese and Japanese-Americans. So did state attorney general Earl Warren and Tom Clark, chief spokesman for the Roosevelt Administration. (After serving on the U.S. Supreme Court, both men regretted that endorsement.) Behind the scenes, McWilliams tried to slow the stampede, but he never opposed the internment publicly.

All that changed in 1942. When campaigning for governor that year, Earl Warren pledged that his first official act would be to fire McWilliams. That promise was designed to please the state's growers, who opposed McWilliams' positions on farm labor. After leaving office, McWilliams was free to critique the internment of Japanese residents based solely on their ancestry. In

*Prejudice* (1944), he refuted every argument for incarceration and showed that racial prejudice, not military necessity, prompted the order. He also proposed federal action to forbid discrimination based on race, color, creed, or national origin. His arguments resonated with Justice Frank Murphy of the U.S. Supreme Court. A New Deal Democrat who joined the court in 1940, Justice Murphy disagreed with the Court's decision to uphold the constitutionality of the internment. In his dissenting opinion to *Korematsu v. United States*, Justice Murphy cited *Prejudice* on four separate points.<sup>9</sup>

After the war, McWilliams wrote *Southern California Country: An Island on the Land* (1946). Still regarded as the finest interpretive history of the region, it also inspired Robert Towne's original screenplay for *Chinatown*. McWilliams dedicated the book to his friend, Robert Kenny, a former newspaperman, judge, and cofounder of the National Lawyers Guild. When Earl Warren became governor in 1942, Kenny replaced Warren as state attorney general and worked with McWilliams to soothe Los Angeles after the Zoot Suit Riots of 1943. After the war, Kenny observed the Nuremberg trials and reluctantly ran for governor against Warren. When HUAC subpoenaed the Hollywood Ten in 1947, he served as counsel. Rather than asserting their Fifth Amendment rights, the leftist screenwriters, directors, and producers challenged HUAC's right to question them about their political views. They were cited for contempt of Congress and served prison terms. As their appeal went forward, McWilliams drafted a supporting amicus curiae brief, but the U.S. Supreme Court declined to hear their case.

In 1950, McWilliams left Los Angeles for New York City. His charge was to edit *The Nation* magazine's special issue on civil liberties, but he stayed on and became editor in 1955. The McCarthy Era was especially difficult for the magazine and its supporters. McWilliams had sounded the alarm in *Witch Hunt: The Revival of Heresy* (1950), but many Americans were not yet attuned to the threats posed by fervent anti-communism. In 1951, McWilliams became a founding member of the Emergency Civil Liberties Committee (ECLC), which was formed after the ACLU declined to represent those charged under the McCarran Act of 1950. That law, which overrode President Truman's veto, required Communist organizations to register with the U.S. Attorney General. It also created the Subversive Activities Control Board and authorized the President to apprehend and detain those who might engage in acts of espionage or sabotage. The U.S. Supreme Court initially deferred to the law but later struck down many of its provisions on First Amendment grounds. Other parts of the law were repealed, and Congress abolished the Subversive Activities Control Board in 1972.

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6. Richardson, *American Prophet*, 60.

7. *Perez v. Sharp* (1948) 32 Cal.2d 711.

8. "Honorable in All Things," Oral History Program, UCLA (1982), 187.

9. *Korematsu v. United States* (1944) 323 U.S. 214 (Murphy, J., dissenting).

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McWilliams' role on the ECLC did not go unnoticed. The committee became the target for the newly formed American Committee for Cultural Freedom (ACCF) and its affiliate, the Congress for Cultural Freedom (CCF), whose members included Irving Kristol and Arthur Schlesinger, Jr. In a letter to theologian Reinhold Niebuhr, Kristol called the ECLC a Communist front, and after singling out McWilliams for suspicion, he added, "There are, of course, non-Communists who are taking part, but no one can be legitimately described as an anti-Communist."<sup>10</sup> McWilliams described himself as a democratic socialist, but he remained on the FBI's Security Index at least through 1958, and his writings, affiliations, and travel were monitored well after that. As for the CCF, later reporting revealed that its funders included the CIA. Relishing the irony, McWilliams encouraged blacklisted

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10. Victor Navasky, *Naming Names*. New York: Viking Press, 1989; rpt. New York: Hill and Wang, 2003, 56.

screenwriter Dalton Trumbo to write an article for *The Nation* about the CCF as a CIA front.

McWilliams retired from the *The Nation* in 1975, taught briefly at UCLA, wrote a memoir while suffering from cancer, and died in Manhattan in 1980. At that time, his reputation was well established but not commanding. It improved significantly in the 1990s, mostly on the strength of endorsements by Kevin Starr and Mike Davis. A prolific, popular, and consequential author who was also a radical, McWilliams now embodies an ideal that seems increasingly remote to his admirers — a figure who could litigate a case, serve in state government, write campaign speeches, critique fiction, edit a national journal of news and opinion, and reach general audiences without catering to them. In no small part because of his legal activism, McWilliams is now recognized as one of the most versatile American public intellectuals of the twentieth century. ★

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