

THE UNIVERSITY OF CALIFORNIA'S LOYALTY OATH FIGHT

By John S. Caragozian

Since its 1868 founding, the University of California has driven our state's economic, intellectual, and cultural development. Indeed, as exemplified by its 60-plus Nobel Prizes, the UC has achieved worldwide preeminence.

From 1949 through 1952, however, conflict over a UC loyalty oath threatened the University's foundations.

By 1949, a Red Scare swept the United States. Communist Russia tightened its grip on Eastern Europe; China became Communist; American and British scientist Klaus Fuchs confessed to espionage, having secretly passed atomic bomb secrets to Russia, which then detonated its own atomic bomb; and, after sensational trials, New Deal lawyer Alger Hiss was convicted of perjury relating to his Communist contacts.

One particular fear was subversion in education, especially the introduction of Communist ideas at universities. In 1949, US Congressional hearings included possible Communist influence at the UC Radiation Laboratory, which had been involved in developing the atomic bomb and continued to engage in top-secret weapons research. The same year, controversy swirled over whether British leftist Harold Laski could lecture at UCLA. See David Gardner, "The California Oath Controversy," 18-20, 32 (1967).

Against this background, the California Assembly proposed a state constitutional amendment, giving it (the legislature) power to ensure UC faculty and staff loyalty. The proposed constitutional amendment was never placed on the ballot, but the UC's long-time governing body, the 24-member Board of Regents – consisting mostly of gubernatorial appointees, along with the governor and other state officials – reacted with alarm.

The Regents' primary concern was to preserve the UC's independence from day-to-day politics. On the other hand, the Regents genuinely feared Communist influence at the UC. The Regents' specific rationale here was that Communism required rigid adherence to centralized dogma, such adherence being incompatible with impartial scholarship and objective teaching.

To prevent further threats to the UC's independence and simultaneously guard against Communism, the Regents, in March 1949, unanimously adopted the UC's own loyalty oath. Each professor and staff would have to sign that he or she was not a member of "any party or organization that believes in, advocates, or teaches the overthrow of the United States government by force or by any illegal or unconstitutional methods." Failure to sign the oath would forfeit appointment and salary.

The Regents notified the UC's Academic Senate (composed of tenured faculty), which protested against the oath beginning in June 1949. The Academic Senate emphasized its anti-

Communism, but expressed concerns about the oath. The major concern was that the oath threatened tenure, generally defined as a right to continued employment during good behavior and efficient service; tenure, in turn, was seen as the basis of academic freedom, as it allowed professors to teach and research new or unpopular topics without losing their jobs. The Academic Senate had additional concerns, such as the slippery slope of barring Communists today and some other group tomorrow, which would lead, in one professor's words, to "the destruction of the University." *See id.*, at 66-67.

Finally, the Academic Senate raised the legal question of whether the Regents could require UC faculty and staff to sign the new oath. California's Constitution, Article XX, Section 3 specified a short, general oath – to "support and defend" the US and California constitutions – for "all public officers and employees" and moreover specified that "no other oath shall be required." Also, no one outside the UC was subject to the new oath. *See id.*, 32, 57, 66-67, 69.

In 1949, the Regents and Academic Senate attempted to negotiate over a loyalty oath, but no solution emerged. Some Regents expressed frustration that the Academic Senate had the temerity to question the oath, because, under the traditional management-labor model applicable to private businesses, the Regents' prerogatives were not subject to negotiation. The Academic Senate countered that the faculty, typically in the form of academic departments, had primary authority over hiring and retention of faculty. The Academic Senate also resented the Regents' attempt at coercion via sign-or-forfeit and, instead, proposed a voluntary oath.

Internal divisions emerged within the Regents over the oath's effectiveness in ensuring loyalty. Governor and Regent Earl Warren, for example, opposed the oath as something that "any Communist would take – and laugh about it."

New, external events affected the process, too. The 1950 Korean War (where Communist North Korea supported by Communist China invaded US ally South Korea) and the ascendance of US Senator Joseph McCarthy (with his anti-Communist demagoguery) made it even more difficult for anyone to be seen as soft on Communism.

The UC Alumni Association attempted to broker a compromise involving individual hearings, but the Regents and Academic Senate disagreed over the critical detail of whether non-signers could retain their appointments and salaries if the hearings found no evidence of Communism.

The stalemate hardened. In April 1950, the Regents issued an ultimatum to UC faculty and staff: sign the loyalty oath or forfeit appointment and salary for the 1950-51 academic year. In the end, 39 professors – some nationally prominent – and 84 other staff refused to sign. The Regents dismissed all non-signers from employment despite no evidence that any was a Communist. *Id.* at 189, 207.

The consequences were immediate and serious. Some 55 courses were canceled for lack of professors or staff. Some 47 renowned scholars declined UC appointments in the wake of the 1950 dismissals. Leading universities, among them Columbia, Harvard, Johns Hopkins,

Princeton, and Yale, and learned societies such as the American Mathematical Society and American Historical Association all condemned the UC Regents.

In the meantime, two consequential events occurred. First, the California legislature, with Governor Warren's support, mandated a new loyalty oath for all state officers and employees with language even stricter than the UC oath (by forswearing current membership *and membership in the previous five years* in organizations or parties advocating government overthrow "by force or other unlawful means" [Emphasis added.]). Enacted as an emergency measure, the new law – commonly known as the Levering Act – became effective in August 1950.

Second, the UC non-signers organized themselves, retained counsel, and petitioned for a writ of mandate against the Regents in October 1950. Petitioners argued that the UC oath violated the Constitution's Article XX, Section 3 "no other oath" language, the Regents lacked authority to dismiss petitioners, and the oath infringed on tenure rights. The petitioners prayed for their reinstatement.

In April 1951, the District Court of Appeal ruled in petitioners' favor on the narrow Article XX, Section 3 issue and ordered reinstatement. The court found it unnecessary to rule on petitioners' other arguments. *Tolman v. Underhill*, 229 P. 2d 447.

The California Supreme Court, on its own, granted a hearing and later requested supplemental briefing on broader issues, including free speech protections, the nature of the Communist party, and tenure. In October 1952, the supreme court ruled that the state constitution's Article XX, Section 3 and enabling legislation evidenced the legislature's intent "to occupy this particular field of legislation," namely a public employee oath, and left no room for the Regents to create a separate UC oath. The court found it unnecessary to decide broader issues such as free speech. *See Tolman v. Underhill*, 39 Cal. 2d 708, 710, 713.

The petitioners' apparent victory, however, was undercut by two related cases decided the same day. First, in *Pockman v. Leonard*, the supreme court upheld the validity of the Levering Act's oath as applied to the California state colleges. The court held that the legislature had the power to vary the wording of the Article XX, Section 3 oath, provided that the new wording comported with the constitution's "intent." The court then somehow concluded that the Levering Act oath was not "political opinion," but, instead, was merely for "orderly conduct of government." *See* 39 Cal. 2d 676, 682, 686 (1952). Second, in *Fraser v. Regents of University of California*, the supreme court, in a brief decision, applied the Levering Act to the UC. 39 Cal. 2d 717 (1952).

In sum, everyone lost. The UC lost faculty and staff, failed to attract other prominent scholars, and was condemned by other universities and organizations. The Regents saw their authority eroded by defeat in the courts and by the Levering Act. Faculty and staff, while winning the court battle against the Regents' oath, lost the war by having to sign the even stricter oath. (In November 1952, voters approved a constitutional amendment incorporating the Levering Act's oath into Article XX, Section 3, though, in 1967, the California Supreme Court overruled

Pockman and struck down the Levering Act oath in *Vogel v. County of Los Angeles*, 68 Cal. 2d 18, 24-26.) Perhaps most important, the oath fight generated distrust within the UC that took decades to heal.

Ironically, the Regents' oath that occasioned these losses was singularly ineffective. To be sure, a UC Berkeley teaching assistant in physics was investigated, found to be a Communist, and dismissed. No loyalty oath, however, contributed to this process. Indeed, the teaching assistant had previously signed the Regents' oath.

John Caragozian is a Los Angeles lawyer and on the Board of the California Supreme Court Historical Society. He thanks Janie Schulman for her contributions to this column. He welcomes ideas for future monthly columns on California's legal history at jcaragozian@sunkistgrowers.com.

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