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Loyalty Oaths and Academic Witch Hunts

by Charles Howlett and Audrey Cohan

In New York's public schools, colleges, and universities, teachers and professors, at the time of their hire, are required to sign the following statement: "I do solemnly swear (or affirm) that I will support the Constitution of the United States of America, the constitution of the State of New York, and that I will fully discharge, according to the best of my ability, the duties of the position (title of position and name or affiliation of school college, university or institution to be here inserted), to which I am now assigned" (McKinney's Consolidated Laws: Education 16, 81).

This loyalty oath is similar to what most states, including New Jersey, demand as a condition for employment. It would be interesting to poll current educators to find out how many actually remember signing this pledge and what reservations, if any, they may have had. More than likely, the opportunity to receive a position outweighed any reluctance to sign on the dotted line.

The current loyalty oath is relatively non-threatening in matters of academic freedom. Yet there was a time in United States history when loyalty oaths struck fear in the hearts and minds of those who encouraged free inquiry and open discussion on controversial issues.

The history of loyalty oaths goes back to the First World War. Prior to that time, teachers were relatively free to express their opinions on matters of public interest. Loyalty oaths acquired an even more sinister and far reaching application during the post-war Red Scare of 1919-1920. According to historian Robert K. Murray (1964: 170-171), "New York City, . . . was the chief area where witch hunting for 'Red' school teachers was undertaken." The superintendent of the city's schools, William L. Ettinger, insisted that "the New York City system had no place for any teacher whose 'personal convictions' made it impossible for him to be a 'patriotic example to his students.'"

The Lusk Commission

On March 26, 1919, the New York State Legislature set up a joint committee of six members under the chairmanship of Senator Clayton R. Lusk. The committee was charged with investigating and reporting back to the full legislature on matters involving radical and seditious activities. The committee's creation and actions resulted in the enactment of two new school laws. The most dramatic one established a loyalty oath that all teachers were

required to take and mandated expulsion of any teacher found guilty of advocating "a form of government other than the government of the United States or of this state" (Ekirch, 1967: 236). It became the legal instrument for firing many teachers. However, when the hysteria subsided in 1920, New York Governor Alfred E. Smith, approved the repeal of the Lusk school laws. He declared that the two laws "were repugnant to American democracy and a violation of freedom of opinion and freedom of speech for teachers and schools, both of which could be compelled to defer to what a state officer deemed loyalty."

The loyalty controversy resurfaced during the height of the Great Depression. Once again, New York was in the forefront. In 1934, state legislator Irving Ives successfully sponsored the passage of a bill "requiring a loyalty oath of all teachers as a defense against 'isms'" (Ekirch, 1967: 357). This action was prompted by the increasing popularity of Marxism among intellectuals and the failures of capitalism in the 1930s. In the late 1930s, the state conducted numerous investigations of communist influences in schools and colleges. A 1939 statute mandated the dismissal of teachers in public school or colleges who advocated the violent overthrow of the lawful government. It was specifically aimed at the New York City school system, where, in 1935, a Communist faction had gained control of the small teachers' union.

While World War II resulted in near patriotic conformity, emerging Cold War fears, sparked by Wisconsin Senator Joseph McCarthy's accusations of subversion and disloyalty on the part of public servants, rekindled the loyalty controversy in the immediate post-war years. In McCarthy's relentless hunt for Communists, he was joined by large numbers of private citizens – at the height of his influence a national poll indicated that Americans who supported his actions outnumbered his critics by almost two to

one. Caught in the web of “guilt by association” were actors, writers, educators and other individuals and organizations investigated and accused of Communism or Communist sympathy. By 1952, approximately thirty states, including New York and New Jersey, enacted some sort of loyalty oath for teachers and professors.

McCarthyism in New York

In *No Ivory Tower* (1986), Ellen W. Schrecker argues that McCarthyism was a reflection of the public’s displeasure over America’s international role and internal security fears sparked by growing tensions with the Soviet Union and the emergence of Communist China. By invoking the icon of national security, school officials and college presidents were able to give their actions a patina of patriotism. In New York, Senate Majority leader Benjamin Feinberg sponsored legislation that directed the Board of Regents “to draw up a list of subversive organizations, membership in which would automatically constitute ‘evidence of disqualification for a position in a public school in the state’” (Schrecker, 1986: 114). The law also required school leaders to certify that their employees did not belong to any organization on the subversive list.

Teachers were singled out for special loyalty oaths. The ostensible purpose of the loyalty oaths was to force Communist teachers to resign or be exposed to charges of perjury. More sinister were attempts to demand complete conformity. The new loyalty oath required educators to swear that they did not subscribe to certain beliefs or belong to certain organizations. The damage to intellectual freedom was costly. The stifling of free inquiry as a means of searching for truth, especially in social and political subjects, dealt a serious blow to teacher freedoms.

Fortified with this new statute, the witch-hunt in New York began in earnest. Attacks were carried out in both secondary schools and in higher education. At the University of Buffalo, William Parry, a philosophy professor, was summarily dismissed in 1953 for his refusal to cooperate with the House Un-American Activities Committee. In New York City, the Board of Higher Education used a provision of the City Charter to fire any teacher who invoked the Fifth Amendment before a congressional investigating committee. Three professors were fired in October 1952 for refusing to tell a Senate committee whether or not they ever

belonged to the Communist party. Over the next few years, several hundred New York teachers in public schools and colleges across the state resigned or were dismissed after they refused to implicate others.

The most celebrated case was that of Bernard Adler, a Brooklyn high school mathematics teacher. Adler was a Phi Beta Kappa graduate from City College who received Master’s and Doctoral degrees from Columbia University. He had been employed in the New York City schools since 1932 and was active in the progressive Teachers’ Union in the 1930s. After the enactment of the Feinberg law, Adler was one of many teachers who came under suspicion for alleged subversive behavior. His refusal to cooperate with government investigations into teachers’ political beliefs and associations ultimately resulted in his suspension and dismissal.

Adler fought these actions in the courts and his case made its way all the way to the United States Supreme Court. His defense team argued that the Feinberg law was a violation of his 14th amendment due process rights. The climate of opinion in the United States was decidedly against toleration. The veneer of McCarthyism clouded judicial judgment and the Supreme Court upheld his suspension. It was not until 1976 that he was reinstated and allowed to retire.

McCarthyism in New Jersey

New Jersey educators fared no better. In 1951, the Rutgers University administration became aware that Moses I. Finley, a historian at its Newark campus, was about to be called before a congressional investigating committee. Finley was accused of running a Communist study group while a graduate student at Columbia University in the 1930s. Finley, who was considered “an outstanding teacher and scholar,” denied any communist ties. Simon Heimlich, an associate professor of mathematics in the College of Pharmacy, was also called to testify. Heimlich was an outspoken leader of Rutgers’ chapter of the American Association of University Professors. Rutgers president, Lewis Webster Jones, announced “We cannot . . . allow academic freedom to be used as a cloak for incompetence; nor can we tolerate conspirators who claim its protection in order to destroy freedom” (see <http://www.scc.rutgers.edu>, accessed 9/26/2006), and established a Board of Review to investigate the professors.

New Jersey's 1947 "Statement of Loyalty" asked "Do you now give sincere and complete support and do you now affirm that you will give sincere and complete support in and out of the classroom, to the doctrine that political and economic transitions in the United States of America are properly to be effected and accomplished only by orderly constitutional processes that express the will of the majority, and not by force, violence or any other unlawful means?" (see <http://www.scc.rutgers.edu>, accessed 9/26/2006). When Finley and Heimlich refused to answer questions before the congressional committee, the Board of Trustees decided to fire both the professors. The Rutgers faculty decided to go along with the administration's blacklist, voting 520 to 52 in support of the board's policy of excluding Communist Party members from the faculty.

By the mid-to-late 1950s, with the demise of McCarthyism, most states curtailed rigid enforcement of loyalty oaths and blacklists of educators. The 1956 Supreme Court case, *Slochower v. Board of Education of New York City*, ruled that teacher Harry Slochower's summary dismissal for invoking his Fifth Amendment privilege before the Internal Security Subcommittee hearings violated the Due Process Clause of the Fourteenth Amendment. In New York, Commissioner of Education Clifford Allen issued an order effectively permitting former, but not current, members of subversive organizations to hold professional jobs in public schools, colleges, and universities. From that point on academic freedom protections for teachers increased tenfold.

The matter was finally settled in the 1967 Supreme Court case, *Keyishian et al v. Board of Regents of the University of the State of New York et al*. In this case, after the privately owned and operated University at Buffalo was merged into the State University of New York, three professors, including English instructor Harry Keyishian, were threatened with termination if they refused to comply with a requirement of university trustees that they certify that they were not and had never been Communists. All three professors

sued the State University of New York. In its decision, the Supreme Court invalidated the state's Feinberg law.

Although loyalty oaths remain a requirement for teacher employment in public education, they are far less intrusive in matters of academic freedom. However, there was a time, when faced with Cold War realities and legislative enactments, educators were put at risk. During the dark ages of the McCarthy Era loyalty pledges were extended far and wide to include obtaining a driver's license, fishing license, and building permits in the state of New York. Texas demanded that school textbook authors not only sign anti-communist oaths, but include in their works accounts of "our glowing and throbbing history of hearts and souls inspired by wonderful American principles and tradition" (Schaller, Schulzinger, & Anderson, 2004: 78). American society in the late 1940s and early 1950s had to face the realities of "guilt by association," blacklisting, and loyalty oaths for public servants. Sadly, despite proclamations supporting a democratic way of life, America's teachers were forced to choose between loyalty to the state and loyalty to one's conscience. Conscience hardly ever won out.

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