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American Bar Association, to President Cloide E. Brehm, March 24, 1952

Robert E. Mathews

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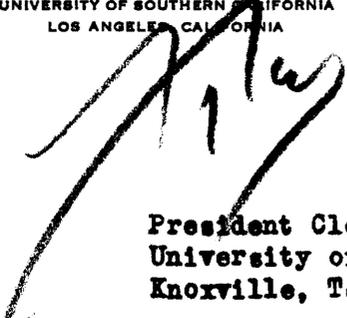
March 24, 1952

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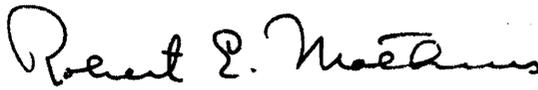
Dear Mr. President:

The annual meeting of this Association, held in Denver last December, adopted a set of resolutions relating to each of the following matters: loyalty (or disclaimer) oaths; knowing participation of teachers in conspiratorial enterprises; sweeping loyalty investigations; procedure for a fair trial, with faculty participation, in cases involving issues of academic freedom; and requirements of advance administrative approval of invitations to speakers appearing on the campus or under university auspices.

Each was adopted without a dissenting vote after consideration and presentation by appropriate committees. Each is a statement of principle and conviction rather than a requirement for membership in this Association.

By authority of this Association I am sending you herewith a copy of these several resolutions for your information.

Very truly yours,



Robert E. Mathews

REM:cc

Encl.

THE ASSOCIATION OF AMERICAN LAW SCHOOLS

Statements as to Loyalty Oaths and Related Matters

Adopted at its 51st Annual Meeting,
Denver, Colorado, December 30, 1951.

A

Statements adopted on Recommendation of the Executive Committee:

I

Ever since it has existed our country has been a symbol of liberty for tyrannized peoples everywhere. Among the freedoms in which we pride ourselves is that of scholarship and scientific inquiry. We hold it before the world that our scholars are free, that they are permitted to find and teach the truth as they see it, that they have not been degraded into ingenious apologists for doctrines imposed from above. The conditions that have justified this proud claim are today endangered.

The threat of another war and the discovery of defections among American citizens have created an atmosphere of emergency in which a resort to measures of restraint and coercion becomes tempting. The encroachments on the freedom of scholarship that have so far been agitated or adopted are not great measured quantitatively. But the reality of freedom cannot thus be gauged. The object of freedom is the fullest development of man's intellectual and moral powers directed toward an understanding of the truth. This development cannot occur in an atmosphere tainted by suspicion and creeping intimidation.

It is therefore important that the Association should at this time declare its views concerning the issues that have been raised recently by investigations into the personal beliefs and affiliations of university faculties and by the imposition of loyalty tests requiring a disclaimer of present or past membership in the Communist Party or other organizations defined as subversive. The conclusions of the Association concerning these issues have purposely been stated in general terms. The principles enunciated here are directed not merely to the present situation, but to a possibly changed future in which temptations toward treasonable acts may come from other sources than they do today.

II

To say that a man is free to believe as he sees fit does not mean that his attitudes toward his chosen profession are irrelevant to his qualifications for that profession. A belief in lawful procedures may properly be demanded of one who undertakes to be a teacher of law. Whatever ideals he may cherish, he must be willing to work for a realization of them within the framework of orderly lawful and democratic processes. The teacher of law with no real belief in the principle of legality is a contradiction in terms.

It follows that a law teacher may not be a participant in conspiratorial enterprises predicated on the assumption that ends sought can only be attained through a violent overthrow of government. A law teacher who knowingly engages in activities of this sort is unworthy of his profession and cannot claim the right to teach a subject which his own conduct disavows.

III

It is consistent with these principles that a law teacher should on first assuming his duties be required, as he is in some universities, to pledge allegiance to the constitutions of his nation and state. To go beyond this simple, adequate and traditional form and to impose tests probing into matters of personal belief, or into past or present associations, is obnoxious to the spirit of a nation conceived in liberty.

During the formative era of this country's history the evils of the "oath of abjuration" were sufficiently familiar so that measures were taken to prevent the introduction of such oaths among our institutions. The national constitution prescribes for the President a simple, affirmative pledge of fidelity to office without any negative or abjuring clauses. Similar provisions for state officials are contained in many state constitutions, which often make explicit what is implicit in the national constitution -- that no other form of oath may be required.

There are grave objections to any requirement that compels a teacher to disclaim particular beliefs or associations before being permitted to take up or continue his office. It is deeply distasteful to the loyal citizen to be asked to clear himself of suspicion by a process of forswearing. The offensive quality of the procedure is not offset by any tangible gain, for it can hardly be supposed that a traitor would obligingly reveal himself by refusing to make the required disclaimers. Finally and most importantly, experience, both recent and ancient, shows that tests of this sort once instituted are likely to be extended to ever-widening areas of conduct and belief. There is a deep-seated conviction in our democracy that a man should be judged by what he says and does and that it is improper to intrude against his will into his private beliefs and the beliefs of those with whom he associates. Once the inhibition imposed by that conviction has been broken down, there is a natural tendency to expand the process of inquisition. What began as an attempt to ferret out traitors is likely to end as a device for determining whether a man's opinions, and the opinions of those with whom he associates, conform to some standard pattern. When this occurs freedom of scholarship is at an end.

IV

Sweeping investigations into the loyalty of university faculties, instituted in the belief that if the inquiry is broad enough some instances of disloyalty may be uncovered, are to be condemned both on principle and because of their demonstrated effects in practice. Experience shows that such investigations do great harm and almost no demonstrable good. They stir up animosities, give

currency to unfounded rumors, injure the reputations of innocent persons and waste the energies of all who participate in them in a futile attempt to find something that is not there or is present only in infinitesimal degree.

V

University faculties have a vital stake not only in freedom but also in the principle of due process. Whenever charges against a teacher involve issues of academic freedom, a fair trial of those charges requires not only an opportunity for the formal presentation of relevant facts and arguments, but also that the viewpoint and needs of the university as a community of scholars be represented. This can be assured only if appropriate provision is made for some faculty participation in the trial and decision.

* * * *

Note: By action of the Association the following "interpretative appendix" was added to the Statement: "The above resolution concerning the general principles of academic freedom is not to be interpreted as changing the application of the policy of academic freedom affecting church-related schools heretofore approved by the Association of American University Professors."

The Executive Committee also calls attention to the fact that the reference to a pledge of allegiance to the constitution (in the first sentence of Article III above) assumes that the teacher is an American citizen. Some recent legislation requiring that all teachers pledge allegiance to the constitution has caused unintended difficulties in the case of professors who have not yet obtained American citizenship or who are visiting from abroad.

* * * *

B

Statement Adopted on Recommendation of the
Committee on Academic Freedom and Tenure:

In recent months there has appeared a new and dangerous threat to academic freedom: a trustee-imposed requirement of advance approval of outside speakers by a university official, before they may deliver talks on the campus, or under University auspices. Such a requirement, by stifling freedom to listen, restricts the sources of information and ideas and is inconsistent with the functions of higher education. The strength of the educational process and of research depends upon preservation of free inquiry and of the moral and intellectual independence of the individual teacher and the individual student. The Association of American Law Schools calls upon university authorities to preserve unimpaired this essential aspect of their operation as institutions of learning.