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The students will go before the Superior Court of Alameda County or before the Federal District Court and ask for an order requiring the University either to stay the sentences pending a re-hearing or to void the sentences entirely. The students will argue that the University, as an agency of the State, is subject to all the provisions of the U.S. Constitution. In particular, they will argue:

- (1) In *Dixon vs. Alabama State Board of Education*, 294 F.2d 150 (1961), (a similar case involving a disciplinary hearing in a State University) the Court held that if a hearing committee does not make the final decision the defendants must have the opportunity to make comments on the committee's recommendations before the final decision is made. The students and their lawyer were not shown the Ad Hoc Committee's report until Chancellor Meyerson had handed down the sentences.
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- (4) Goldberg and Klein will additionally argue on 1st Amendment grounds. All the students are charged with using or displaying various tabu words. In addition the charges and the findings make it clear that planning, addressing, and moderating the meetings of March 4 and 5, and introducing speakers, are held to intensify the violation. The students will argue that, under the 1st Amendment, all evidence of serious participation, of sustained discourse, and of deliberate coordination of discussion must be held to mitigate the violation.



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GOLDBERG, MICHAEL KLEIN,
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vs.

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please send your checks
to:

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Box # 830

Berkeley Calif. 94701

questions



WHAT DID THE STUDENTS DO ? WHAT WERE THE SENTENCES ?

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Michael Klein - for reading aloud the last eight paragraphs of Lady Chatterly's Lover in the Campus Police Station - suspension until September;

Arthur Goldberg - for moderating meetings in Sproul Hall Plaza - dismissal;

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WHAT IS OBSCENITY ?

"Obscene material is material which deals with sex in a manner appealing to the prurient interest... All ideas having even the slightest redeeming social importance -- unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion -- have the full protection of [First Amendment] guarantees." (Justice Brennan, Roth vs. U.S., 354 U.S. 476, 1957)

DID THE STUDENTS' BEHAVIOR CONSTITUTE OBSCENITY ?

In intention at least, the students' behavior had social importance. Bills thought of the sign as protesting an unjust arrest. Goldberg explained at rallies that verbal tabus are mediators of class and racial discrimination. Klein argued that the tabu on frank speech in "mixed company" and the shibboleth of "shielding" women from certain words defines women as members of an inferior caste. Zvegintzov, a foreign student, parodied the grossness of American college sports fans.

SHOULD THESE STUDENTS HAVE KEPT THEIR IDEAS TO THEMSELVES ?

As one witness said at the hearing, "All rallies annoy someone". New ideas and new forms of expression are always uncomfortable. If these students succeeded in making others - willy nilly - think and discuss a forbidden topic, could that not be "conduct becoming a student" ?

DID THE COMMITTEE VIOLATE THE "DECEMBER 8 RESOLUTION" ?

Yes. On December 8 the Berkeley Division resolved that "the content of speech and advocacy should not be restricted by the University". The Campus must face the fact that this policy would make the University less restrictive than society at large (which admits restrictions on freedom of speech in the context of libel, fighting words, and obscenity). The supporters of the resolution argued that society - with its police and courts - would impose its own restrictions; additional restriction by the University is ignoble. The implementation of the policy will require courage.

WERE THE SENTENCES HARSH ?

Yes. One of the students lost a fellowship by his suspension. All have suffered the painful humiliation of exclusion from their chosen community. In the words of the Cole-Linde-O'Neil Memorandum to the Academic Freedom Committee: "University disciplinary sanctions, although not 'criminal' in the technical sense, are likely to be far more drastic in their effect than typical criminal penalties. Almost any student would rather pay a \$25 fine, or even serve a week in jail, than be expelled from college".

DO THE SENTENCES CONSTITUTE "DOUBLE JEOPARDY" ?

Perhaps. The Fifth Amendment forbids an agency of government to use its powers in a punitive fashion to compound a judicial penalty. When an individual connected with such an agency behaves so as to threaten its intrinsic interests, it may constitutionally proceed to sever his connection, provided the severance rests upon a careful analysis of what its intrinsic interests are. Out of the recriminations against these students has emerged the proposition that a University's intrinsic interests include "aesthetic considerations" and "decorum". Such a proposition rests on a Hollywood conception of a University. If an academic must have a suave manner or an equable temperament and a University must have well-kept lawns, many of the world's finest minds and finest institutions are excluded.

DID THE STUDENTS "FLAUNT" THE WORDS ?

Webster defines "flaunt" as "to display boastfully, brazenly, or the like". These students come from an environment -- a whole generation, perhaps -- that does not take verbal tabus very seriously. In using the words they perhaps intended to tease society; they had no notion of launching a brazen or boastful attack. Contrary to rumor, nobody marched around Campus with immense signs daubed with tabu words.

WHY SUCH AN ELABORATE FUND DRIVE ?

The students calculate that to take their case to the Supreme Court of California will cost them \$7,500. If they lose in the lower court, they will appeal; judging by the vehement participation of the Office of the Regents' Counsel in the prosecution before the Committee, they assume the University will appeal if they win. The cost of this flyer (\$75) comes from cash donations at a Sproul Hall Plaza rally.

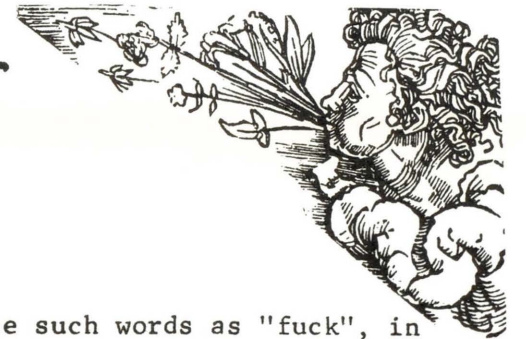
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ARTHUR GOLDBERG (b. 1942, Inglewood, Calif; B.A., Berkeley, 1964; Graduate Program in Education; Chairman of SLATE, Spring 1964 / Previous arrests: Sheraton-Palace, Oakland Tribune, Sproul Hall) "I have never been able to understand why certain words were considered obscene while others weren't. I become enraged over a sign that says 'I hate niggers' and I consider it to offend my standards of decency. . . I also consider President Johnson's ordering the bombing of innocent women and children in Vietnam to be one of the greatest obscenities in American history, yet I do not see him being arrested for his obscene acts." (Spider, 1, 2, p. 22)

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Martin L. Van Loucks, complaint to UC Police Dept., March 5 1965

Four-letter words are suppressed because they have magic power over respectable society. . . Frightened out of our wits by the breaking of [a] tabu, we accuse an intelligent and honest generation of degeneracy, when we should acknowledge their courage and their seriousness.

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The Division joins with the President, the Acting Chancellor, and the student body in condemning the willful flaunting of obscenity on this campus as a travesty of the legitimate uses of free speech. . . UC Academic Senate, Berkeley Division, March 12 1965

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Editorial, Daily Californian, April 28 1965

Issues of free speech in a democracy often arise out of marginal cases. We do not decide whether an issue has been raised by pointing to all the free speech that abounds. The hard case and the forlorn sect may give us trouble beyond their due, but they also summon us to reaffirm our fundamental commitments.

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