

April 26, 1965

The Office of the Dean of Students, upon the request of the Chancellor, is releasing the report of the Ad Hoc Committee which heard the cases of David A. Bills, Arthur L. Goldberg, Michael L. Klein, and Nicholas Zvegintzov. Ordinarily, the University does not reveal disciplinary reports and actions against students. We depart from this policy in this instance in view of the facts that the hearings were made public at the request of the students, that some details of the report have appeared in the press, and that their attorney, Mr. Peter Franck, acting on behalf of the students, has agreed to the release of the report. The members of the Ad Hoc Committee, chaired by Professor John Whinnery, have also agreed to its release.

TO: ACTING CHANCELLOR MARTIN MEYERSON
BERKELEY CAMPUS

April 20, 1965

Report and Recommendations of the
Ad Hoc Committee on Student Conduct

Chronology

This Committee was appointed by you on Thursday, March 11, 1965. Appendix I. Harvey Saferstein, a student member, was shortly added and participated in all hearings and committee meetings but did not vote on the final recommendations. The members met on the following Friday and Saturday to determine procedures and set a schedule. Charges against four students, David Bills, Arthur Goldberg, Michael Klein and Nicholas Zvegintzov, were filed with us by Dean of Men Arleigh Williams on Wednesday, March 17. Appendix II. On that same day the Chairman by letter notified the students involved of a Pre-Hearing Conference to be held on the following Friday and in that letter proposed that hearings be held on the following Monday, March 22. Appendix III. That schedule was proposed at a time when it was believed that at least some of the students did not dispute that they committed the acts charged; apparently some conversations with you also gave such indication.

At the Pre-Hearing Conference, the students did not appear but were represented by Mr. Peter Franck, an attorney. He made a number of objections to Committee proposals relating to timing and procedure. These objections were recorded in minutes kept, attached hereto as Appendix IV. Attached as Appendix V are Mr. Franck's remarks concerning those minutes. Rulings on the objections were made on March 23 and the hearings were then set for Monday, March 29. Appendix VI.

On Wednesday, March 24, the Committee sent to the students a statement of Issues to be Decided and Form of Evidence. Appendix VII. The procedures were designed to be as simple and informal as possible. They had to be informal, for at that time there had been threats to us and to you, Appendix VIII, that Mr. Franck would withdraw unless more formal procedures and much greater time were allowed. The students would then have been without the aid of counsel, and the rules had to be simple enough to be understood and used by the students themselves. On the other hand, the rules had to meet some basic requirements of fairness. We were guided in formulating the statement by the recent opinion of the United States Court of Appeals for the Fifth Circuit in Dixon vs. Alabama State Board of Education, 294 F.2d 150 (1961), a case similar to ours in that it involved a charge of serious misconduct for which the possible consequences were severe. The Court states, at pages 158-159, what it regards as the minimum standards of fairness required by the due process clause of the Fourteenth Amendment. Appendix IX. Members of the Committee felt obliged both by conscience and your letter of appointment to be at least as fair as courts have required universities to be.

On Friday, March 26, you, the Committee and its Chairman were served with an alternative writ of prohibition issued by the Honorable Monroe Friedman, Judge of the Superior Court for Alameda County. It was based upon a petition filed by two of the charged students, Mr. Klein and Mr. Bills. Copies of these documents are attached as Appendix X.

The Committee studied the documents and concluded that the writ as issued temporarily restrained the Monday hearings only as to the two petitioners. This interpretation was confirmed by University Counsel. The Chairman therefore notified the remaining two students that the hearings would continue as scheduled on Monday, March 29, setting the time at 1:15 p.m. and the place as Room 13, Old Architecture Building, Berkeley campus.

The two students summoned did appear. They were accompanied by counsel, who served upon the Chairman additional writs naming those two students as petitioners. Copies of these writs are attached as Appendix XI.

Complaint was made then and later repeated in the Daily Californian (editorial of March 31) to the effect that the University had chosen to take advantage of a clerical error on the part of the original petitioners. The University attorneys should be exonerated of any such charge. Acting on its own, the Committee had on the previous Saturday concluded that hearings were not restrained as to Nicholas Zvegintzov, because the stated ground for issuance of the writ was the forthcoming criminal trials, and Nicholas Zvegintzov has not been charged with a criminal offense. Even more persuasive was our conclusion that there had been withheld from the writ one of the major objections stated, that the University regulation under which they were charged was unconstitutionally vague. Since the regulation would have been as vague after the court cases as it was before, the Committee concluded that it was not a clerical error, and that it would be desirable to get all writs on the table at once. Some of our colleagues have been disturbed that the courts interfered at all, but apart from the manner of handling, we believed it proper that questions of legality were referred to the courts since our committee was not constituted to rule on questions of constitutionality. This in fact seems in the spirit of your letter of March 22 to Faculty and Students reminding them that on legal matters "the courts are always open."

On Friday, April 2, the temporary restraining orders were dissolved and a peremptory writ refused by order of Judge Van Sicklin of the Alameda County Superior Court. On Saturday the Chairman notified the students that the hearing was scheduled for Tuesday, April 6.

When the hearing resumed a number of for-the-record statements were made. The Committee met to consider these matters and then indicated to the students and to the University representatives its disposition of these matters.

The Committee made an effort, ultimately futile, to obtain some agreement or stipulation with the students on the factual matters charged. The Chairman finally ruled that the effort was not worth the return, and considered setting

a time for further hearings. Members of the Committee proposed that we hear the evidence presented on the following day, Wednesday, and then recess until Friday to give Mr. Franck the opportunity to prepare his presentation after having heard the evidence against the students. While this discussion was continuing, Mr. Franck appeared to take offense at something said and stalked from the room, his clients following him.

The Committee felt that this action was more than discourteous but not so much so that it warranted terminating the hearings without further opportunity to appear. There had been many other expressions of the students' contempt for the Committee, noted in more detail below.

After some fruitless telephone conferences between Mr. Franck and Professor Sato, designed to set mutually agreeable times, the Chairman sent to the students a notification that the hearing would resume on Thursday evening at 7:00 p.m. in Room 791, Barrows Hall. Mr. Franck sent a counter telegram stating when he would be available. It may be noted that all later hearings were set at times he listed as acceptable.

When the hearing convened on Thursday evening, the students were represented by Professor Thomas Cowan. Mr. Klein became dissatisfied with that representation and, after making a short and polite statement of his reasons, withdrew.

The Committee had previously been supplied by Mr. Reidhaar and Dean Murphy, with written statements in compliance with our procedural statement. Appendix XII. These are statements by Lt. Chandler of the University of California Police Department; a statement by Mark L. Van Loucks, a student; a statement by Dean Murphy; a statement of prior disciplinary actions taken in similar cases by Dean of Men Arleigh Williams; and a statement by Mrs. Patricia Barnes, an employee of the A.S.U.C. Mrs. Barnes did not appear at the hearings and the events she describes were abundantly covered by testimony of other witnesses. We therefore place no reliance on her statement in arriving at our findings.

Lt. Chandler was unable to testify at our first hearing because he was testifying in court that day. Because of illness he missed the Thursday evening and Friday sessions as well. Because his testimony was important as to all of the students and critical as to Mr. Zvegintzov, we postponed our final hearing until he had recovered sufficiently to attend. It was held on Thursday, April 15. As will appear in the Findings, Lt. Chandler was personally present at all the events involved.

Findings of Fact

There are substantial differences between the cases of the four accused students. We make findings about them individually, and in alphabetical order.

David Arbor Bills. The charge against Bills is that he "acknowledged to University police officers that he was manning a table" bearing signs containing offensive words which sign Bills "reportedly helped prepare." What seems like a technical point turned into one of substance -- had Bills in fact done what he said he had, or did he falsely acknowledge that he had. We are agreed that either is an offense, but that they are not offenses of the same gravity.

We cannot determine whether Bills was in charge of the table even though he acknowledged that he was. However, the acknowledgement of his responsibility for the table does mean that he was, at least extemporaneously, adopting the statements on the sign on the post and containers for fund solicitation.

The facts are that two University police officers, Lt. Chandler and Sgt. Halleran, went to the table at approximately 1:30 p.m. on March 4. The table bore a container soliciting contributions for the defense of a non-student arrested on campus the day before for displaying an indecent sign. Exhibit A-3 was identified by two witnesses as an accurate portrayal of the table. There was no person in attendance when the officers arrived; they asked Arthur Goldberg, who was near the table, who was in charge. He replied that he would get the man who was in charge, or was responsible, or manning the table -- the precise wording is unclear. In a matter of moments Goldberg returned with Bills. There is dispute over whether Bills seated himself; Sgt. Halleran and Dustin Miller, a student, thought he did, but Lt. Chandler thought he did not. Both officers do recall that Bills was asked about his association with the table and that Bills acknowledged that he was connected with it; both recall that Bills was asked about the sign above the table (Exhibit A-2) and that he replied that he had helped prepare the sign.

Sgt. Halleran immediately arrested Bills and took him to the police office, Room 2 of Sproul Hall. Lt. Chandler took down the sign, folded it (it was 22" x 28") and took it with him to the police office. It has been in his custody ever since. We did not ask to see it, since the photograph seems clear and adequate.

Bills made no further statements about the matter, either to us or to the police. By some coincidence, his lawyer arrived in the police office while Bills was being processed and advised him to make no statements. Sgt. Halleran asked Bills no further questions. Before us Bills remained silent, again on the advice of his lawyer. We find no fault with this, and our recommendation is not colored ~~by~~ his failure to speak.

A minor matter which was blown out of proportion is the question of who caused the arrest of Bills. University counsel, for some reason, thought it pertinent.

to show that Professor Arthur Ross had "complained" to the police. Sgt. Halleran made it very clear that the complaint was oral, not signed. The Daily Californian reported next day that Professor Ross had "signed" a complaint. When Sgt. Halleran reappeared he clarified the point. He did say that when Ross first came into the station he did not identify himself but did so when told that police did not act on anonymous complaints. Professor Ross wrote to the Committee a letter which is attached as Exhibit D. It says in substance that a visitor to the campus had told Ross that there was an obscene sign on campus and that Ross "asked Lieutenant Chandler to look into it." But he did not make a "complaint." We find no real difference. What a citizen reports to police may seem information to him, a complaint to them. The basic question is whether the signs were there, not who alerted the police to their presence.

Arthur Lee Goldberg. The charges against Goldberg are the broadest posed in this case. He is alleged to have moderated the meetings in Sproul Hall plaza on March 4 and 5 and to have used on both occasions a number of indecent expressions.

We find the charges against Goldberg abundantly proved. He was involved in the planning of the "protest" and he moderated and participated in both meetings, introducing speakers who uttered offensive words and using them over the microphone himself.

Goldberg's participation ran throughout the events of these two days, March 4 and March 5. The rally on the 4th was planned at Goldberg's home, according to Michael Kogan, a student, who was present. (Others present, if any, were not identified.) Goldberg wanted to protest the arrest of John Thomson, a non-student arrested on campus March 3 for carrying a sign bearing an indecent word. According to Kogan, Goldberg said that he would not have done what Thomson did but felt that it was wrong that Thomson was arrested. While in jail in Oakland, Goldberg had been with prisoners who were serving thirty day terms for using similar language in public. Goldberg and Kogan decided to protest. Kogan quoted Goldberg as saying "What did we fight for last semester except the right to protest?" When asked, Kogan said that Goldberg did not protest in Oakland because there was no audience there, and the protests at the Oakland Tribune did not get them very far. (At this point Goldberg interjected that he was on probation in Oakland.)

Kogan said that the planners were not trying for a "confrontation" but that they did want a "test." When asked "Who were you testing?" he replied, "The University and the law . . . (unclear). The whole issue was a test of free speech." Mr. Franck attempted to modify this formulation but at a later stage Kogan repeated it in the statement that they hoped to convert the issue of Thomson's arrest into a broader test case rather than have it forgotten as an isolated instance.

At two separate stages of his testimony, Kogan was asked about their expectations of responses to their planned actions. One was when he was asked if they expected an adverse reaction, and he replied that they thought it would be a

test. The other was when he was asked whether he expected to hear the offensive words used. He was not sure that he expected them, but freely admitted that he was not surprised to hear Goldberg utter them. He did say that the purpose was not a "challenge" but to protest the arrest of the previous day.

Goldberg's activity on the following day emphasizes his central role in the occurrences. Lt. Chandler's statement and testimony indicate that Goldberg was present in a pre-rally exchange. Kogan said Goldberg started "the whole big rally" of March 4. Others support this. Victoria De Goff, a student, was present from beginning to end on March 4 (from 11:55 a.m. to about 12:15 p.m. by her estimate.) She heard Goldberg utter the words with which he was charged, but she was not offended and thought the rally a protest against the arrest of Thomson.

Bruce Gale, a student, was near the rally on March 4. Gale was then, he said, opposed to the purpose of rally, as was most of the crowd at the outset. But Goldberg brought out the hypocrisy of word taboos. He used other words, such as nigger and kike, to show how certain words offend some groups while other words offend different groups. Gale's own attitude toward the rally and the use of the specific words changed, he said, as he realized Goldberg's purpose.

Goldberg was also present at the table at which Bills was arrested. When the police officers went to the table and asked Goldberg who was in charge, Goldberg volunteered to produce either the person who was in charge, or responsible--which is not clear, a difference which may be important for Bills but which does not matter as to Goldberg, for either version tends to show his association with the table. Goldberg did produce Bills, who was then arrested.

Alexander Hoffman, a graduate of the University and of Yale Law School, a member of the California Bar and a Lecturer in Speech, was at the March 4 rally. Goldberg spoke. Hoffman thought that Goldberg used the words in question as something of a minor Lenny Bruce, on whom Hoffman professes to be an expert, not as humorously as Bruce but with the same general purpose of awakening the hearer to the hypocrisy of suppressing the words when the thoughts they convey are not offensive in themselves. To Hoffman, the rally, or at least Goldberg's participation, was clearly a form of social protest. The crowd did not seem to him to be shocked.

He was asked whether he recognized Exhibit A-3, the photograph of the card table. He did, and said it was an accurate portrayal.

The University apparently has a tape recording of some or all of the March 4 rally. It is described as indistinct and often unintelligible. We wanted to hear it played but restrictions on its use imposed by the District Attorney's office made it so difficult that we finally abandoned the effort since we had by that time a good picture of the total context of that rally.

According to Hoffman, Goldberg chaired the rally on March 4, and he was an active participant. We also find that he moderated the meeting of the 5th. The principal witness was Mark Van Loucks, a student. He had known about Goldberg

previously, and recognized him. Because the hearing was technically open, although the audience never numbered more than a very few, we enforced a rule against using the words charged. The Van Loucks testimony presented a special problem because there were a number of words to be identified and several speakers who used some but not all of them. (Some other speakers who appeared early in the rally but left before the obscenities appeared, such as Professors Arthur Ross and Mark Schorer, had urged moderation and restraint.) The expedient method we adopted for the Van Loucks testimony, to the considerable amusement of the students, was the identification of words by number. A copy of Van Louck's statement was marked as Exhibit C, signed in red ink by him, and the words were numbered in order of their appearance in that statement. The exhibit is attached.

Van Loucks heard Goldberg use these words as follows: words 1 and 2 more than once, a number of times; word 3 only once; word 4 only once, addressed to a person in the crowd; word 5 more than once; word 6 more than once. Some of the latter uses were directed at persons in the crowd and expressed Goldberg's feelings at having fraternity boys come down from the "hill" to impose their values and standards, which were middle class, on persons from lower economic classes. (Goldberg interjected that he had said "working class.") There were threats and calls from the crowd, such as "come down here and say that, you dirty pig."

Van Loucks said that Goldberg participated in the rally for a total of perhaps twenty minutes, although it was hard to measure. This time was broken up, because Goldberg was acting as moderator of the meeting, introducing perhaps five other speakers who used words 1 and 2. Further evidence of Goldberg's being in charge was found by Van Loucks in the fact that Goldberg indicated the subject to be discussed by several speakers.

Van Loucks understood that Goldberg's point was that society was hypocritical; that middle class values were being imposed upon all of society; that in the background from which Goldberg came these words were very commonly used, and without shame. He thought that Goldberg intended to get reactions to the words and thus to show to listeners their own hypocrisy.

Van Loucks also said, however, that Goldberg frequently used words 1 and 2 as exclamations or expletives, without any surrounding context. This was confirmed by the testimony of Sallie Shawl, a student called by Mr. Franck, who heard the words sometimes used out of "intellectual context", which she thought was "just silly", a form of "comic relief." She found the dominant theme of the rally to be "Society is hypocritical." The words did not offend her. She learned them early working in Democratic politics. She also worked in the Scranton campaign, where they were commonly used.

Van Loucks had gone to the rally hoping to hear a defense of Thomson's action. He did not recall that either the Daily Californian announcement or the "hand-bill" he saw warned that he was to be exposed to vulgarity or crudity. When uttered, the words were amplified by speakers placed at the north end of the Student Union steps, near Ludwig's fountain. Van Loucks was at various places

during the rally and heard clearly everywhere; at one time he was perhaps five or ten feet short of the length of the Union building away and still heard. He thought the speeches could be heard on the cafeteria terrace, although probably not inside the dining commons. (Ronald Lanstein, a student, differed on the loudness but was not present for the entire rally.) Many people were in the plaza. Most were of student age, but one group he thought he could identify as high school students, of both sexes, on a tour or visit. There were ten- or twelve-year old children. There were three or four nuns in habit. There were three to four hundred people in the plaza, he estimated.

Van Loucks was offended by the place and the purpose, as he understood it, of the use of the words. Apart from place and purpose, he had heard the words before and was not much offended by them. When first asked why he remained to hear things which offended him he said he did not know. Later he stated that he remained to take notes with the thought of a possible complaint. He had read Lady Chatterly's Lover and understood Lawrence to be making a point about people and situations; he regarded this as a "legitimate" use. Apparently he had between his Thursday evening testimony and his brief Friday afternoon appearance uttered some of the words in the presence of some unnamed persons. In response to a question from Mr. Franck, Van Loucks said that he did not think a room in a University building, with the door closed and only two others present, was a "public place." Neither does the Committee. Van Loucks suggested that he had been entrapped into saying the words, a matter Mr. Franck did not pursue.

In an attempt to show bias, Van Loucks was examined on whether he was a fraternity man and on his attitudes toward the FSM. He said that he was not a fraternity man and did not intend to become one. He agreed, he said, with the goals of the FSM but disagreed with methods. He was also asked if he was biased against Goldberg. He said he was not; he had previously commended, and again commended, Goldberg for the latter's work in the Free Speech Movement during the fall semester, saying he thought Goldberg had acted to restrain some potential excesses of the movement.

Van Loucks had heard "swearing" on campus before. The words, not identified, were usually used as exclamations, such as when Craig Morton dropped the ball.

University counsel did not supply us with a tape of the March 5 rally. We read that Senator Jack Schrade had either a tape or a transcript of the tape of the rally that day. The Chairman wrote to Senator Schrade and received a portion of the transcript. None of it related to any of the students charged before us.

Michael Louis Klein. Michael Klein is charged with having used the words in question in addressing the March 4 meeting, and with having read "aloud and repeatedly" passages from Lady Chatterly's Lover containing the term in the police office, Room 2 of Sproul Hall.

That the acts charged were committed is very clear. Witnesses produced by Mr. Franck proved them. Alexander Hoffman, identified above, heard Klein's

talk at the rally, It dealt with the etymology of the word, the rights of the individuals and whether police should interfere in personal matters. How many times Klein used the word does not appear, nor does the precise context.

Mrs. Dorothy White, also produced by Mr. Franck, is a part-time employee of the University. She went into the basement of Sproul Hall after the arrest of Bills. She arrived before Klein began to read. Klein said that he intended to read from Lady Chatterly's Lover to show the police that the word had been used in the day's activities in the same way in which it was used by Lawrence. Klein intended to show that this usage had the approval of the courts, referring to an opinion printed as an appendix to a Grove Press edition, and that it had the approval of distinguished scholars, referring to Professor Mark Schorer's introduction to the Modern Library printing, the one Klein used. Mrs. White was given a copy of the hardbound printing of the Modern Library publication and was asked to read from the top of page 343 to the end of the book on page 344. She did, and identified these passages as the ones read by Klein. She was asked by Mr. Franck whether Klein used undue or excessive emphasis or inflection on certain words. She thought not; he read it as one would poetry. Because of the differences between male and female voices, and for other reasons, she doubted whether she could duplicate the sound of Klein's reading, and the Chairman overruled Mr. Franck's request that she be asked to read it as he had.

Mrs. White was not offended by the words, although she did hear some persons express disturbance at the reading. She could not see these people. There was some confusion at times, and she could not see into the police office; Klein was reading into the window of the office. She thought that the total reading took about six minutes. Klein read through the passages involved and started through once again before he was arrested. She was not surprised at the arrest.

Sgt. Halleran's testimony is not substantially different from that of Mrs. White. He thought it was read "repetitiously," with emphasis on certain words. He estimated the time involved at ten minutes. He did not hear any explanation by Klein of his purpose in reading the book, but said that there was confusion and for a part of the time he, Halleran, was in his office, from which he could see but not hear what was going on.

Illustrative of some of the artificial difficulties made for the Committee was the showing to Sgt. Halleran of a hardbound book, rather than the paperback Klein used, and asking Halleran to identify the passages. Halleran was not, as he said, familiar with the book and could not locate the passages from the page number he had. A member of the Committee then located a passage which Sgt. Halleran did identify. There might have been some point to this if Franck had not, within the hour, identified the passage for Mrs. White. It might equally be said that University counsel could have avoided this problem by having a copy of the book available. The copy Klein read from was taken from him and presumably is within the possession of the University. And without the book Mr. Franck supplied we would have been little helped; while most of us have read the book, none are so familiar with it that we

could know what words were used, or their context, by mere mention of a page number.

Lt. Chandler gave much the same report of the reading incident. He did not recall too clearly Klein's words at the rally. As did Sgt. Halleran, Lt. Chandler thought Klein stressed the offensive words in the reading; because of the noise level, Chandler heard only a monotone interspersed with what seemed almost like shouts of the offensive words. He did not hear Klein's explanation of purpose nor any reference to court opinions holding the book not to be obscene. He was busy with other things and Klein apparently was talking to Chief Woodward more than to Lt. Chandler; Chandler says such a statement could well have been made. And Chandler added that it was his impression that Klein seemed almost to be attempting to provoke his own arrest.

On Thursday evening, April 8, at the hearing which Mr. Franck did not attend, Mr. Klein discharged Professor Cowan as his counsel and made a statement. When it became apparent that Klein was about to admit guilt, Professor Degnan interrupted him to warn that he was under no duress and that the Committee had not as yet made any decision on whether questions would be addressed to the students charged. Despite that warning, Mr. Klein decided to proceed. A transcript, substantially verbatim, is attached as Exhibit F. He disclaimed any reliance upon the privilege against self-incrimination. The Committee does not, however, rest its finding that the acts charged did occur upon that statement; they were amply proved by the evidence recited above.

We did tell him, on April 15, that it was the opinion of the lawyer members of the Committee that he had waived any privilege he had, for this proceeding, and we urged him to make a statement about his reasons and justifications. He finally did, under an agreement that we would not regard the making of the statement as any further ground of waiver. The substance of that statement seemed to us that there are no words which are dirty as such. Obscenity comes from the context. In the context of Lawrence's use, which was literature, the word is not bad; in fact, Lawrence's purpose was in part to redeem the word. In the same sense, the use of the word in the rally and we understood him to say, on the sign as well, was a political act of protest. It should enjoy the same protection in that context as in literature.

As for its being said in mixed company, most people were not offended. If an insubstantial number of people are offended, that is not a question for the law. Lawrence was also attempting to liberate women, to give them the same sexual and other freedom that men enjoy. That they still do not enjoy the same prestige as men do is evidenced by the fact that there were no women members of the Committee.

Klein did not address himself to possible distinctions between reading the word privately in a book and shouting it over an amplifier or reading it aloud in a crowded area to people who do not wish to hear it.

Mr. Sparrow, for the purpose of the record, addressed some questions about the rally and the reading to Mr. Klein. As was expected, Mr. Franck advised him

not to answer, and he did not.

Nicholas Zvegintzov. The charge against Zvegintzov is the simplest of the group; he is said to have led an obscene cheer, responded to by a number of people. That the cheer did occur seems clear. Dean George Murphy heard it from his office on the second floor of Sproul Hall. Dean Williams entered that office and heard the latter part. Both heard it clearly, from a distance of perhaps fifty or sixty feet. Some other witnesses testified that they had heard it. Strangely, although many people are in the plaza at that time of day -- minutes before noon on Thursday -- witnesses who could identify the participants seem hard to find.

One man who apparently could is a "plain clothes officer" the University is unwilling to identify. We ruled at the outset that we would not comply with the hearsay rule but would evaluate hearsay evidence in the light of that defect. We find it impossible to evaluate the testimony of a person whose identity is withheld from us, and we place no reliance upon the facts recited in the second paragraph of Lt. Chandler's report.

Had Lt. Chandler not appeared and testified, we would have had to find the charge against Zvegintzov unsupported. Chandler's testimony was, however, stronger than his statement. He was across the plaza from Sproul Hall, just coming up the stairway from the lower plaza, when he saw Zvegintzov approach the steps of Sproul Hall. Zvegintzov called something Chandler could not clearly distinguish to the group on the steps. (Zvegintzov was previously known to Chandler.) Chandler continued to walk toward Sproul, as did Zvegintzov. As they drew closer, Chandler could distinguish the letters more clearly. As to the last two he is sure, from his own recollection and not from what was told to him by the secret policeman, what they were. And he is also clear that Zvegintzov then called to the assembled group "What does it spell" or "What have we got?" or something similar. And the group responded with the word, which he clearly heard. He does not know whether Zvegintzov joined in the response or whether he was merely the "cheer leader."

Chandler's explanation to us for checking with the plain clothes officer was that he simply could not believe what he thought he heard, people yelling such a thing in public.

Chandler's estimate on timing is different from Dean Murphy's. The latter thought the yell occurred very shortly before 12:00, perhaps one or two minutes; Chandler thought it was five or ten minutes before. Neither had checked a watch. Chandler did remain in the area throughout the day's rally, positioning himself at the south end of the Sproul Hall steps. He heard many dirty words, but no other such cheer or yell occurred; had there been one in that vicinity he would have heard it.

Instructed by Mr. Sparrow, Lt. Chandler declined to name the secret policeman. Chandler also declined to produce a copy of his original arrest report. He said that the statement on file with us is taken from that report.

When asked why he did not arrest Zvegintzov immediately, Chandler said that he thought he needed a more solid case, with corroboration, and he also thought there was a "technical" question on whether he could arrest without having heard the entire incident.

We find that there is sufficient evidence to support a finding that Zvegintzov led the indecent cheer.

University counsel took the position before the Committee that this was an administrative proceeding with no presumption one way or the other. It is clear to us that The Regents have declared that there is a "presumption in favor of the students...which continues until, by neglect of academic duty, or by misconduct, it is reversed...." We so ruled. We felt that the testimony of Lt. Chandler did overcome the presumption. Mr. Zvegintzov was so informed, and Committee members addressed to him some questions designed to ascertain whether his refusal to answer was based on the privilege against self-incrimination. He declined to answer. We probably would not invoke the technical rule that only the witness, not his lawyer or some other person, can invoke the privilege against self-incrimination. But Mr. Franck is a lawyer and understands the distinctions drawn. When asked for the ground of his advice to Zvegintzov not to answer, Mr. Franck made it clear that the ground was that no person subject to disciplinary proceedings can be called upon to answer questions. Mr. Franck further said that there was no competent evidence to shift the burden or rebut the presumption, and that the statement attributed to the unidentified informer was not competent.

We agree with the latter point; we have disregarded that evidence entirely. We might also respect a claim of privilege against self-incrimination. Although Zvegintzov, unlike the others before us, has not been arrested or charged, Lt. Chandler's stated reason was that he lacked corroboration. If Zvegintzov admitted the charge, the corroboration would be supplied. But Zvegintzov declined to rely upon this ground, and we declined to recognize any general rule that a person subject to disciplinary proceedings within the University can refuse to answer questions under any circumstances.

General Comments and Conclusions

Procedural Questions. We asked the University and the students to submit to us in writing the statements of witnesses and of factual matter. The University complied and the students did not. As to the statements of the charged students, or some of them, there may have been good reasons. On the whole, however, the failure of the students to comply with the request aided rather than hindered us. It took more time to hear the witnesses produced by Mr. Franck, but the knowledge obtained through his witnesses filled out the total picture far more than did the written statements. Until the witnesses appeared, the showing was of a number of nearly concurrent but not necessarily connected incidents. After we heard them we had a clear pattern of planned and coordinated activity which had as one of its purposes a test of University reaction.

Relationship to Pending Court Cases. A main contention of Mr. Franck, Professor Cowan, and others is that the hearings should not have proceeded for the three students charged in the courts until their court cases were completed. The committee considered this point seriously, and believes that the University could not accept this point as a matter of principle. Court cases often continue for long periods, and student discipline matters should be resolved as soon as practicable, both for the good of the students and the University community. Thus it seemed to us desirable to proceed promptly at least to such a point that there were issues that could not be settled until after the court procedures. At this time we believe there are no such unresolved issues, so we are presenting the report although the several delays have caused it to appear nearly coincident with the schedule of court action.

Behavior of Students Before the Committee. We have also commented earlier on the openly contemptuous attitudes of the four students toward the Committee. This was expressed by oral denunciations, mutterings, gestures and the "walk-out" of April 6. As a consequence, the Chairman read a statement concerning this behavior at the beginning of the April 8 hearings. Student behavior in the hearings was markedly better from that date on, although possibly for other reasons than our statement. The statement for the record is:

"Before these proceedings resume formally, the Committee wishes to make the following statement.

At the session on Tuesday, the Committee made clear its presumption of the innocence of the students appearing before it; this should, in fact, have been unnecessary. But the presumption of innocence on the part of the students must be accompanied by a presumption of good faith on the part of the Committee itself. The behavior of the students and of their counsel throughout these proceedings strongly suggests that the Committee is not being accorded this presumption. The dramatics which characterized Mr. Franck's abrupt departure on Tuesday, when in fact the Committee was simply discussing its schedule and had made no final decision concerning his request, were insulting to the Committee, and in addition, suggested a type of pressure which the Committee must condemn in the strongest terms. In addition the Committee has endured, with considerable patience, statements and behavior from the students appearing before it which can only be described as both contemptuous and contemptible. The Committee wishes to make clear that it will tolerate no more behavior of this kind."

Recommended Disciplinary Action

The committee members agreed unanimously on the findings of fact presented in the immediately preceding portion. They also agreed that the actions of the students did constitute violations of the University's Regulation on Student Conduct and Discipline. Whether motivated by social protest or not, the members agreed that the loud use and prominent display of the words in question in a public place such as the Sproul-Student Union Plaza is a violation of the regulation.

The committee members, however, differ in their recommendations on the disciplinary measure. This disparity stems from their differences of opinion as to the seriousness of the individual offenses. In the deliberation as to the recommended disciplinary measure, many factors were mentioned, and as might have been expected, there were divergent views as to the weight to be given to such factors as (1) deliberate use or display of the words in question in a public plaza, irrespective of motivation, (2) mitigation because of the purpose of the conduct in question, (3) the planned process in violating the rights and sensibilities of others, (4) the damage to the University and to legitimate student movements, (5) the expected conduct of the students in the future, (6) the deterrent effect from differing disciplinary measures, and others. It should be emphasized, however, that, whether or not persons should react so strongly to the use of the words, it seems clear from the theme of some of the participants' talks that they knew people would, and yet they planned and participated in the activity over a period of time.

It should be noted that the statement to the Committee from Professors Diamond, Selznick and Tussman, Exhibit E, was very helpful to us in analyzing both our own reactions and those of others to the public use of the word, whether or not we have drawn the same conclusions as they from this analysis.

The recommendations on the four cases follow:

David Bills. It was agreed by all that the finding of fact given earlier represents the least of the offenses shown. Mitigating factors include the student's youth, and his probable influence by older members in the movement.

Three committee members recommend suspension for the remainder of the semester.

Two committee members recommend official censure plus formal probation.

Arthur Goldberg. It was agreed by all that the finding given earlier represents the most serious of the offenses shown because of Goldberg's planning of the movement, chairing of the two rallies, and his participation in the events at issue over a period of two days.

Three committee members recommend dismissal.

Two committee members recommend suspension through January, 1966.

Michael Klein. Because of the somewhat different points of view toward the nature of the offenses, as noted above, there is more difference in the majority and minority recommendations here than in the above cases. Klein's participation in the Thursday events was considerable, but his total involvement appears to be less than that of Goldberg.

Three committee members recommend suspension through summer, 1965.

Two committee members recommend dismissal.

Nicholas Zvegintzov. The finding in this case represents an isolated and possibly spontaneous act, but one that could find no possible social justification. Thus again there was an appreciable difference in the majority and minority recommendations.

Three committee members recommend suspension through summer, 1965.

Two committee members recommend suspension through June, 1966.

W. J. Bouwsma
R. E. Degnan
H. S. Johnston
S. Sato
J. R. Whinnery, Chairman