University of Wisconsin (Madison Campus) Faculty Document 217
April 25, 1968
Report of AD HOC Committee on Mode of Response to
Obstruction, Interview Policy, and Related Matters

Part Two:

University Discipline as a Mode of Response to Obstruction

I. Changes in the Structure and Procedure for Disciplining Students

II. Sanction Policy

A. Suspension, Yes; Expulsion, No

B. When are University Sanctions Justified?

1. Majority Statement

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In the course of our deliberations on the mode of response to obstruction, we have given considerable attention to the subject of disciplining students, a problem to which the Crow Committee devoted two subsections of its report, viz., Section III, Subsection 1, University Power to Discipline Individual Students, and Subsection 2, Structure and Procedure for Disciplining Students. In this, Part Two of our Report, we are concerned with those same issues, and in some respects recommend amendment of the Crow Committee proposals.
I. CHANGES IN THE STRUCTURE AND PROCEDURE FOR DISCIPLINING STUDENTS

Under this heading we have three changes to suggest in the Crow Committee proposals:

A. Faculty Election, Rather Than Administration Appointment

The Crow Committee has recommended that "there be established a Committee for Student Conduct Hearsings to replace the present Administrative Division of the Committee on Student Conduct and Appeals. The membership is fixed at forty-two, and forty-one of the members, a chairman from the Law Faculty, are to be elected by the students."

A new appeals body, called Committee for Student Conduct Appeals (CSCA) would "assume the present appellate functions of the Committee on Student Conduct and Appeals."

The Crow Committee recommends that the four faculty members of the committee be the chairman, be appointed by the Chancellor. This replaces a system in which the administrative division made up the trial body. We strongly support the principle that at least as long as the administration plays a "supportive" role, its role as arbiter should be minimized. But we think the role of the hearing body is better served by having the four faculty members elected by the faculty rather than appointed by the Chancellor. That is, the role guiding the selection of the CSCA ought to govern the selection of the four faculty members on the CSCA. Four of the five faculty members of the CSCA are to be elected by the faculty from among nominees provided by the Faculty Nomination Committee. We recommend that the four faculty members of the CSCA (exclusive of the chairman) be chosen in the same way for non-tenured staff as for tenure.

B. No Option to Have the Case Heard by Faculty Members Only

The Crow Committee has proposed that "In any case referred to CSCA, if the student whose case is to be heard so requests in writing, and if the case is set for hearing, the case will be heard and decided by only the faculty members of CSCA, with three faculty members required to constitute a committee." This appears to be a positio...next time for the full text.
discretion in deferring the return of Dow until the faculty had debated the interview policy; over the Regents, charged by the legislature with relinquishing too much of their power to the faculty, to hold that the Regents had operated against, through a comprehensive punitive threat to reduce the budget.

Thus the predominant reaction was that somebody—perhaps everybody—had to be punished. In considering the scope of our responsibility, we have given much time to the question of academic freedom. We have also asked whether the question is judged in part by the spirit and temper of its system of justice, and we find our faith in the liberalism of that system rudder-shaken by the apparent having operated at the University this year of crisis. And yet we have been unable to devote the time it deserves to the question of a reconstitution of the relations of the academic community to the university and its members —in the judicial area, because our attention has continually been diverted by the possibility of the passage of repressive legislation.

We regret most deeply that circumstances have impelled us to consider the problems of our campus so much from the standpoint of the institution as an entity, as if academic freedom were a part of the question of how to regulate and restrict the expression of moral outrage. In our judgment, the entire academic community, and each of its members, has an interest in the future of the University, and we have forcefully expressed the belief that a mass distraction from its reason for existence. It is most unlikely that the moral dilemmas of our nation which were the cause of our campus crisis are soon to be resolved, and we find intolerable the prospect of any choice by the University to retreat from its proper responsibilities in the struggle for a just resolution. Somehow the University is called upon to make a commitment to itself and to itself, to live up to the responsibilities it has assumed to itself, and to challenge the excellence of all that the University stands for as far as the University is concerned. And we would urge on the University to consider the consequences of its action, that it may be a part of the solution, that it is not possible to live with the University without facing the problem of what is to be done, and that the University is at least an extreme response, and one that should be employed infrequently indeed.

Another way of looking at the problem of student membership of the academic community is to look at the situation of the University. Obfuscation among the more academic issues involved in campus demonstrations are present in the anti—academic community. anti—professionalism that are associated with the modern university. Although we recognize that there are already various channels of communication in the University, including the academic community, and various University officers who have attempted to medicate some of the unfortunate situations that have arisen in the past, we believe that the academic community would benefit from the appointment of a University Ombudsman.

The University Ombudsman, an office that might best be shared among the academic community, would allow the University Ombudsman to mediate student and faculty conflicts and to mediate the conflict in a way that would be fair and reasonable. In the case of the University Ombudsman, the appointment of a University Ombudsman would be investigatory, but his powers would be sufficient to intervene on behalf of an individual entangled unjustly within the bureaucratic thicket.

Although further study is needed to establish the detailed structure of the academic community, and to determine its powers and responsibilities, and to determine the composition of its staff, we believe that the creation of a University Ombudsman should be considered. The possibility of a University Ombudsman would be more appropriate to the Faculty Advisory Service, or to the University Residence Halls, or to some other particular agency would normally be considered by the agency itself. We believe that the appointment of a University Ombudsman would be investigatory, but his powers would be sufficient to intervene on behalf of an individual entangled unjustly within the bureaucratic thicket.

Recommenda 1: That there be appointed a University Ombudsman, and that the University Ombudsman, in consultation with the University community, take immediate steps leading to the establishment of the structure, the definition of the powers and responsibilities of the University Ombudsman, the determination of the composition of the University Ombudsman.

b. University sanction policy

After the events of October 6, a great deal of the attention of the educational community was directed toward the debate over the legitimacy of academic sanctions. There were many complaints about the University community and the treatment of the students and faculty in the determination of the composition of the University.

We believe that the University community should be treated with fairness and respect in the determination of the composition of the University.

We are firmly convinced that the University should not reply primarily upon the imposition of academic sanctions as a response to demonstrations, even when those are obstructive. We note with regret that the number of academic sanctions has increased and that academic sanctions are justified in most cases. We find it difficult to agree with the statement that the value in the value of protecting the academic community is to fail as professors, as students, and as citizens. Our response to the dilemmas of our academic community is one that we consider, and that is the response of the University, the cost of stifling the force, challenge, and respectability of the committed and critical interchange. That is so important that we consider it an educational institution.

We are called upon to consider the question of whether the institution whatever the cost and whatever the means, but rather the reestablishment of a shared sense of values and goals, the restoration of the trust, and the reaffirmation of the cooperative nature of our endeavor.

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Another response to demonstrations should be provision of a meaningful forum for the expression of the concerns of the academic community. In this regard, we support the statements in the recent report of the Ad Hoc Committee on the Role of Students in the Teaching of the University, that the University should favor an increasing student participation in policy discussion and decision. And we concur, in this regard, with the Wisconsin system of selecting the Board of Regents.

A third response should be the reinforcement, both in principle and in practice, of the academic community on matters of community-wide significance. The Crou Committee report includes several useful recommendations in this regard. We view with considerable concern the continuing evidence of failure on the part of the Regents and the administration to consult with representatives of the faculty and the student body on matters of such importance for the academic community as the governing body of the campus. If consultation among all members of the educational community is to have a convincing meaning, it must continue during crises. We believe that the student body should have the University allow itself to lose contact with dissidents regardless of the provocation.

Furthermore we need flexibility in the University's response to demonstrations and obstruction. We have been too prone to respond to demonstrations as if they were only a momentary crisis, and if it required a delay in some particular scheduled activity, or its relocation, are far less serious than those produced by forceful confrontation. The University should consider the need for some form of massive distraction from its reason for existence. It is most unlikely that the moral dilemmas of our nation which were the cause of our campus crisis are soon to be resolved, and we find intolerable the prospect of any choice by the University to retreat from its proper responsibilities in the struggle for a just resolution. Somehow the University is called upon to make a commitment to itself and to itself, to live up to the responsibilities it has assumed to itself, and to challenge the excellence of all that the University stands for as far as the University is concerned. And we would urge on the University to consider the consequences of its action, that it may be a part of the solution, that it is not possible to live with the University without facing the problem of what is to be done, and that the University is at least an extreme response, and one that should be employed infrequently indeed.

Another way of looking at the problem of student membership of the academic community is to look at the situation of the University. Obfuscation among the more academic issues involved in campus demonstrations are present in the anti—academic community. anti—professionalism that are associated with the modern university. Although we recognize that there are already various channels of communication in the University, including the academic community, and various University officers who have attempted to medicate some of the unfortunate situations that have arisen in the past, we believe that the academic community would benefit from the appointment of a University Ombudsman.

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provide a firm-but-gentle paternal guiding hand for students involved. However, this would be a misstep. In most cases the unsavoury of the behavior will not be in dispute, that the student involved by and large prefers to cooperate with the University, and that the major issue is that all interests are best served, including those of the student involved, when the matter is handled within the University and when both the University and the student involved work with agencies external to the University. They involve a confusion of the role of counselor with that of investigator-prosecutor, and the confusion with that of judge-enforcer. The underlying sense of these rules is to treat the student-citizen in all cases first as a student and only second as a citizen. The University has taken the position that several of the improvements recommended in the Remington Report, a document with insignificant influence on sanction policy and frowned upon by the faculty and students throughout the country, have not been implemented on own campus.

It is perhaps pertinent to mention here several of the more outstanding difficulties of our current sanctions policy. The limited variety of sanctions available makes it difficult to deal with students who exercise power on campus. Ineffectiveness and banishment (expulsion) is inappropriate and overly harsh. The growing importance of higher education and the trend toward much smaller student populations make it increasingly less desirable. When harsh sanctions are available to the University, the effectiveness of the University, the University, and the pace and implications of their enforcement is far too slow. Our own reports on the University campus, situations of exposure to double juris-dictions with duplicate sets of sanctions become more frequent and political expression is conspicuously hindered.

Our present sanction policy is one of the many contributing factors to the current crisis in which the University finds itself; its application after the events of October 18, 1967, has exacerbated the tension, the lack of communication, and the risk of recurring crises, felt at the University.

The current period in our history, is not only one of sharp divisions in national policy and university policy, but also one of testing and experiment, of challenges to traditions and norms. Increasingly, universities, especially large public insti- tutions, are taking on a changed role and function. The effects of this change are far reaching and come from the larger community. They are both encouraging and becoming centers for commitment and social action. No one any longer doubts in local areas. Nevertheless, in the University a never-the-less there is a residual paternalism in many responses of this University.

In this period of challenge to traditions and norms, individ- uals, seeking to challenge authority structures, have rendered civil disobedience, individualism, and a more extensive use of the legal machinery available in our society. Like the rest of us, they are engaged in an educational process and the imposition of unconditional conditions in uni-versity sanction policies. It is likely that the behavior of individual students will be aggressive and occasion- ally intransigent.

Clearly, a university committed to the encouragement of responsible criticism and decision-making as a fundamental part of the educational process and to the promotion of social and individual growth, especially the problems arising from the political action in which some members of the educational community are engaged, and must do so with something other than the sanctions of punishment by pain, raids, boisterous pranks, and minor theft.

c. Recent discussions of University sanction policy

Recently at this University, the Crow Committee, in response to the Internal Title IX Committee, has a right to deal with some of these problems. Since the report of the Crow Committee was distributed to the University community, we have had time to consider some of the issues involved. We were unanimous as a committee in suggesting several amendments to the Crow Committee Report (see also, 1), including the unam- monious, and (3) the need to protect the University's interests. We consider the position of the University's independence and the rationale of the University's independence and the misuse of that authority which stems from status. One cannot separate academic freedom from the large community of the University. The advocacy of the "community" model for all the reasons that responsible self-government and responsible self-government and self-government is desirable in an educational institution. We assert that respon- sible self-government for all citizens of our community does not exist, and we offer as evidence that the past academic year for the further assertion that our freedom from outside interference is quite inadequate. We find the following statement from the Report of the Study Commission on University Governance, University of California, Berkeley, to be quite pessimistic.

"If the authority derived from academic or intellectual relationships cannot be used to justify authority imposed upon students in these auxiliary areas, the only other possible source of authority is that provided by the fact that some members of the University are faculty members and that, and that administrators may therefore stand in loco parentis for these non- qc, adults whose capacity for responsible self-government, we hope, and who believe that such paternalism is anachronistic and should be and, in our opinion, the only factors that should be considered in such areas. We find it strange that college students as a class are not available as a group for the natural maturation in a protected environment than non-students of the same age.

A Canadian commission has declared that University students ask to be treated as adults, and it is fitting and fortunate that this should be so. We are pleased with this statement and we believe there are compelling reasons to act upon it, reasons which far outweigh the risk that students will act imprudently or that the University may choose to alienate that minority of parents who wish it to perpetuate their own authority. We are asked to ask the question, to substitute reason for habit or
prejudice in the determination of how he is to use his life, then it seems unduly suspicious and aggravating to subject him to restrictions on either his private or political life mere onerous than those of other peers who are not in college.

The second broad difficulty with the sanctioning system proposed in the spirit of the University's regulations is that the minor's problem is not complicated further by the fact that it is for them to decide whether criminal sanctions are adequate against an offender, and also whether or not to bring a civil cause of action without the imposition of sanction. The discretion of the parent faced with an unruly son or daughter is no more than that of judge in juvenile court. A substantial proportion of the students examined are either too young to vote, and consequently too young to be adult, and many of those who are not yet 21 are exposed to the adult responsibility of compulsory service in the armed forces.

The minority applauds discretion because it permits the injection of wisdom into the process of judgment; they fail to perceive that the problems of discretion are computationally aggravated by the circumstance that the students see this discretionary role as placing them at the mercy of the administration. As they are required to attempt to reconcile their obligations to the University with their obligations to their friends and families, to the complex situations of their work or school, and to the pressures of social life - pressures that are not uniform across the student population, but reflect the special needs of the individual - it is not unreasonable to expect that the interests represented by these pressure groups will be predominately nonacademic in their emphasis. We doubt that the student interest in the peer relation, in the peer setting, in the peer group, is any less subject to the pressures of outside groups than is the faculty interest in student behavior.
In order to expand the variety of sanctions available to the University, we propose that University rules be altered to permit the exclusion of individuals from units and services within the University without necessitating exclusion from the entire University. In some cases, it may be possible to individualize sanctions within the University, using an individual, when necessary, from a particular university activity such as a class, lecture, or forum, and to suspend him from a department or a particular university activity when necessary. Since the behavior from which we need protection is specific to those situations, we should have some way of dealing with such behavior at the appropriate level. To that end, we recommend that if repeated infractions threaten, and, therefore, need concern the entire community, then as just a student whose academic performance is not satisfactory is not permitted to enroll in the College, another, so may a student who does not conform to the standards of behavior in college and to those of another. Only when there is evidence of continuing misconduct or when there is a clear likelihood that such behavior will continue, need an individual be suspended from the entire University.

We note that the safeguards of existing criminal law are adequately available to protect the community. Our proposal should be interpreted as a means to protect the interests of the University in such a community. No possible sanction can protect the University from the occasional vandal who may enroll here. A sanctions policy should be directed primarily toward such individuals who would surely do injustice to the majority of individuals against whom it was applied.

And we note, finally, the need to consider the protection of University interests in the light of our guarantees of equity and freedom of expression to individual citizens who seek to challenge, to question, to resist government. The University environment is by nature a somewhat chaotic one. The intellectual ferment and turmoil need not and must not be sacrificed to maintain order on the campus. Under our policy proposed another, so may a student who does not conform to the standards of behavior in college and to those of another. Only when there is evidence of continuing misconduct or when there is a clear likelihood that such behavior will continue, need an individual be suspended from the entire University.

We propose that University discipline be imposed only where intentional conduct clearly and seriously infringes access of members of the community to the educational process, and alternate safeguards to this access are demonstrably inadequate.

We recommend that appeal procedures be suspended from the University only when such behavior and attitude are such as to indicate a continuing threat of impairment of access to the educational process.

We recommend that Faculty rules be amended so as to permit the exclusion of students from units and services within the University without necessitating exclusion from the entire University.

We recommend that in those rare instances in which an individual is liable to the imposition of both University sanctions and those of another authority for some particular behavior, University policy be that he not be forced to contest simultaneously the two sets of charges.

We emphasize again that sanctions are to be considered as only one of a number of available means of responding to destructive behavior. We assume that our preface and these recommendations will be interpreted such that, when the other appropriate means are not necessary, they will be imposed at the level of the smallest appropriate authority within the University, and that exclusion from the entire University will not be imposed, as it is too rare. We also assume that University policy on admissions and credentials will be made consistent with University policy on sanctions.

We note in passing that, should it be discovered that there is a conflict of University policy on sanctions and those of another authority for some particular behavior, University policy be that he not be forced to contest simultaneously the two sets of charges.

We believe that our proposed sanction policy will place the University in a position of dealing with the complex problems arising from the changing role of students in university community affairs. We realize that changes of the sort we propose involve some risks to the University, but we believe that they involve fewer risks than alternative positions. The likely consequences of the University's reaction to these changes are sufficiently important to warrant the risks involved.

f. Criticism of these recommendations

We have ourselves suggested and discussed a number of possible objections to these recommendations, and we think it appropriate to discuss the major objections here.

It is argued by the minority of our Committee that our proposal lacks support among others who have been examining university discipline policies. While we have already suggested, that our proposals would put us in the vanguard of educational institutions, we should also note that proposals of this sort have been made for many years. The case for the 'Mention on The Academic Freedom of Students', the American Association of University Professors asserts that "Faculty members and administrative officials should understand that professors are not employed to inhibit such intellectual and personal development of students as is often promoted by ... their exercise of the rights of citizenship." The A.A.U.P. also asserts that "...the institutional authority should never be used merely to dedicate the students to any form of special law. Only where the institution's interest as an academic community are distinct from those of the general community should the special authority of the institution be exercised."

We think it may be argued that while classroom activities and lectures are clearly essential and dormitory and athletic events clearly peripheral to the educational relationship, there may be some activities which are neither clearly essential nor peripheral. While we do not recognize that considered judgment (as by the panel of students and faculty recommended in the Review Committee Report) will be necessary to interpret any policy, we believe that to impose the burden of such situations of double jurisdiction not be forced to contest charges in both jurisdictions simultaneously. Accordingly,

(Recommendation 1: See under "w" above)

(Recommendation 2: We recommend that University discipline be imposed only where intentional conduct clearly and seriously infringes access of members of the community to educational processes, and alternate safeguards to this access are demonstrably inadequate.)

(Recommendation 4: We recommend that Faculty rules be amended so as to permit the exclusion of students from units and services within the University without necessitating exclusion from the entire University.)

(Recommendation 5: If some particular behavior is proscribed by law, the University shall normally accept the court's judgment as final dispositive.)

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For the Majority

2. MINORITY STATEMENT

This Committee has an interest in sanction policy because sanctions are part of the "response to obstruction." We are not specifically concerned with sanction policies applicable to the whole spectrum of student misconduct (cheating, narcotics, sex offenses, etc.), but with those applicable to obstruction—though some of the principles we consider may well have broader application.

a. The diverse views on sanction policy

The sanction policy we recommend for dealing with obstruction falls between two undesirable extremes:

(1) The on-the-spot approach which would give the University the all-encompassing disciplinary role of a parent toward a minor. This approach would include such University attitudes as these: "emulating the strict "disciplinary" parent and adopting a policy that University sanctions will automatically apply whenever, and because, the student has been convicted of a criminal offense; or playing the same obsolete game of "wha the standard of conduct," as our Student Handbook
tive sanction less than suspension. On the other hand, in the exceptional cases, whether or not the criminal process had been invoked, the University would have to remove the student temporarily from the community. Such serious consequences of the criminal and administrative proceedings would be avoided.

We begin the ensuing analysis with why it is important for the University to retain, for application to all obstruction or interference with academic freedom and with the right to receive assistance from the university, administrative sanctions considered by themselves.

We are speaking now of suspension, and lesser sanctions like loss of privileges, or probation which can ripen into suspension if the conditions of the probation are violated. (This type of probation which has some force, it is not the probation which the majority characterizes as a "slap on the wrist." ) We do not include expulsion. As indicated elsewhere in Part Two of this Report, our Community cannot afford to forego for university administrative sanctions considered by themselves.

The rationale presented below is in terms of the following objectives: the elimination of immediate and near-eradicative protection of the University community by removal of the violator; helping maintain the autonomous and self-governing character of a university community and avoiding the violation of a university law whose prohibitions or enforcement may be unsatisfactory.

(1) Deterrence

That administrative sanctions are a powerful deterrent is a point that requires little elaboration. We believe there are none, including some of those who advance the "criminal sanctions" argument, who apparently defy the sanctions more to uphold the criminal law. But whether or not most of us, or most students, would make the same evaluation, it remains well established that the threat is a potent deterrent. That is to say, by their known existence and known application, they exert pressure on students to conform to faculty regulations.

The corollary is that if the deterrent were removed, there would be more violations, including more obstructive misconduct, and correspondingly more police activity on the campus—a result we would regard as most unfortunate.

(2) "Remedial" aspect

What we have said about the deterrent pressure brought to bear on students might be described as the "penal" aspect of administrative sanctions. There is also an aspect which courts sometimes call "the remedial" aspect of the sanctions, the salutary effect of the court order upon the social order from which the deviant has been removed. Thus, for example, in cases where a hearing is held to determine whether a breach of discipline has taken place, the student's violations of law, if proved, are made public. The remedy is a double one—punishment for the violation of the law, and the broker claims that the proceeding is so penal in nature that certain elements of criminal procedure would be followed, he is likely to lose on the theory that while the proceeding has penal aspects it is also, and perhaps primarily, remedial. It has a purpose, in other words, of protecting invested interests in the maintenance of an order which is reasonably inferable from the student's past nonviolent conduct. In the university setting, we would be dealing with the kind of damage which is caused by conduct criminally suspect. We believe that not every violation of faculty regulations would reasonably give rise to the inference of such danger to the university community as would exist in the case of the student's suspension.

(3) Maintaining the characteristics of a relatively harmless self-governing "university community"

Certain characteristics of a "university community" would be endangered or weakened if the University gave up its power to control obstructive campus conduct injurious to its interests, by faculty regulations established and administered with student participation.

By a "university community" we refer to a university population with certain characteristics, outstanding among which is a considerable autonomy in relation to the larger community—a freedom to conduct their own educational enterprise, and to do it in the way that best suits the needs of the University, without submission to the rules that constrict a good deal of the concept of "academic freedom.

There are certain additional characteristics of the university community that are pertinent. In any group we call a community we expect interchange among the inhabitants. In the University setting we think of intellectual and social interchange among the students, and among students and the faculty. In other words, the phrase "community of scholars" comes to mind. Finally, as in other communities, we think of a consciousness of mutual obligations that is present in the sense of an internal stability dependent upon acceptance of enforceable "rights" and "responsibilities."

The community model of a university is of course not the only possible model. We believe, however, that it comes close to picturing the kind of organization that the University has been and remains to be. It has long been necessary to be. If so, it is important that the feelings we have pictured as to rights and responsibilities (at least as certain to the people who have described it) be observed. The University activity should be implemented by university enforcement of those rights and responsibilities.

Why is the "community" model so desirable, and university enforcement so important? For all the reasons that [the] responsible government, and free and relative independence of intellectuals in the world of the cooperative pursuit of truth and beauty, are desirable in an educational setting. We are speaking of goals which universities have had temporarily, but which may not have yet won. Surely universities who have won them or come close to winning them should do all they can to extend them.

Some University representatives have felt that it is not in the best interest of the University to invite discussion of the Commerce Committee report. Thus, the legislature cannot be expected to do nothing which harmed the image of a university unwilling to "take care of its own affairs." A vacuum will be filled with passivity irreparable damage to the ideal of a relatively autonomous educational community. Legislative change, remember, may not be confined to the subject of maintaining order on the campus.

It is no answer to our position to argue that even with this University's present system of administrative sanctions, it has suffered—as a result of the obstruction at the Dow Chemical interview on October 18, 1967—a drastic loss of near-eradicative power to be restored by the legislature, that there are two deficiencies in this argument. The first is that intrusion or control is likely to be worse when it is not self-imposed. The second is that the University posture on October 18 was not typical of what we believe its posture will be in the future if our recommendations are followed. The intrusion and intervention occurred in circumstances where the University had not presented a clear image of autonomy—of being able to take care of its own affairs—of its character as a community whose standards had not been perfected. Its rules pertaining to obstruction and to disciplinary hearings were in such a state as to leave the courts with little to do, except perhaps to avert abuse by which we mean that the University did not function without violence or without the use of riot-equipped city police; and in the resulting situation, legislative intervention was to be expected. We believe this to be true not only in this instance, but also elsewhere in this Report, that improvements can be made in the University's rules and its methods of handling these problems, so as better to maintain the University's autonomy and minimize the possibility of external intrusion.

Neither is it an answer to our position to say that the alternative positions we have described at the outset of this Minority Statement are also capable of maintaining the characteristics of a university community. Because, one of its consequences, is the image of a university that is master in its own house, that alternatives which blight the student's heavy burden of identification with the University, the blur is that the University's student will not be a member even temporarily from its community, no matter what the situation, no matter what the severity of the sanctions context, and further the functioning of the university. Each of the alternatives being now pressed upon the University would involve a breach of autonomy—loss of the goals that we have to preserve the area of the student's academic advice (Student Power Report) or as to all conduct outside the area of certain institutional activities, majority (of this committee). And the latter alternative mergers into the former obstruction cases. For while the majority appears to make it possible that sanctions would be imposed in the same manner, the central university functions were not adequately covered by the criminal law, the majority states that the system of university sanctions is adequately covered by the unenforceable assembly statute. Thus, even as against aggravated conduct (e.g. substantial and painful conduct) a University student would be found guilty from the academic community for a year, the University would be powerless to move in that direction. The criminal case, with its heavier burden of proof, is at least sensitive to university needs, may result merely in a fine. Even a jail sentence may, under the Habeus law, involve release during the day to permit attendance at classes.

To emphasize the image of a university able to take care of its own affairs is not to emphasize authoritarianism. The image depicts a university that recognizes the necessity of administrative sanctions is one which is appropriate to, and which helps maintain, an autonomous self-governing community much more than the criminal law—women subject to the rules have little or no role in their formulation or in imposition of sanctions for their violation. This is true even of the criminal law over the themselves, the "Mlegate's rules," earlier described. Of course anyone, including faculty or students, can present views to the Regents before the Regents issue their report.
Regents' rule nor the court process of imposing a criminal mis-
demeanor penalty for its violation has either students or faculty
at the heart of the deliberative, decision-making process. In
contrast, the student disciplinary provisions of the Crou
Report, already adopted by the faculty on the basis of both
students and faculty play a vital role in the formulation of
student behavior and in the disciplinary procedures for im-
position of sanctions. The majority of this same crime apply to all persons
under or undervaluing this which it belittles our community model as
"u^

Finally, our concept of a university community can be more sharply
considered an argument which is based on a quite different conception of a university. The argument has been made
that higher education by the state today must be viewed in the
same way as the welfare benefits it dispenses—the
university playing the role of a service agency or facility. Then, taking the image of the university, it becomes easy to argue
that just as the state offers a welfare benefit and not as a deprivation
of welfare benefits as a sanction, 

The analogy of withholding educational benefits to with-
holding another welfare benefit can be attacked as inept (e.g., welfare
benefits can be literally a matter of life and death to their
recipients; suspension from a university does not absolutely preclude higher education: we can certainly be caught in a belt, unlike this University, would have been without statutory
authorization to sever the relationship in question). But our
primary objection is to the type of community which is large
in size and that the students by the smallness of our University community is not as being at the receiving end of edu-
cational largesse from a detached government which in cases of
tuition fees, are charged at a much higher scale. This, in the
larger sense, is the idea of true civic obligation. They are citizens who are part of and close to the
government in the exercising of the power, acceptance of the of

(4) Avoiding dependence on criminal law that is incomplete or ineffective or inadequately enforced

A final element in the rationale for university sanctions ag-
against the obstruction of university activities is this: dependence on the criminal law may mean dependence on an
agency which is not in the position to enforce or will not be applied to the misconduct involved. Suppose that a
student received a speeding ticket (for a speed he was never
express obligations, should be viewed as implicit in their entire
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Even if the statute did clearly apply to such things as
obstructions of classrooms or gallery; the non-enforcement
authorities should be geared to handle, and be willing to handle,
unless they are prone to a mirage and which in conception
in the non-obstruction or unreported conduct. For instance,
considerable mass of misinformation. The total of University disciplinary cases during the 1967 year amounted to 225 cases handled by
the Division of Residence Halls and 167 by the Office of the Dean
of Student Affairs.

(1) Alleged unfairness of "double sanctions"

The view that conduct covered by the criminal law should
never or rarely be subject also to University sanctions rests
mainly on the assertion that (1) double sanctions represents a unique or rare phenomenon in our legal
system, and (2) that it is, at any rate, inherently unfair.

(1) The prevalence of multiple sanctions in the legal system

To begin with, one must realize that the sanctions utilized
by the modern criminal law are divided not only in their form but also in the groups to which they apply. As a result, sanctions
within the state who engage in homicide, theft, battery, disorderly
conduct, sex offenses, etc. do not apply only to those who enter into special relationships with any university, but also
to those who enter into business or employment contracts or licensing
agreements with the university. In other words, the university is
an "unincorporated agent" to which the state has delegated broad governmental
eral.

The special sanctions in these situations apply even though
the conduct involved has, or may be, subjected to the general
sanctions applicable to everyone, and to the prosecution in that
court. This is because the general sanction by itself is not enough

For example: Suppose a business corporation enters into a
contract to supply goods to the state. The state discovers that
the bid was false or that the person was not the personability,
and, under the anti-trust law, the state to bring a suit. But the
state feels that these prosecutions don't sufficiently
serve the purpose of the special relationship. So it protects
in the interest of the state's employees, to the costs.

In the event that the special relationship is breached, the
state will prosecute. And in the event that the special relationship is
served not only a different purpose of the non-commercial
relationships. Those purposes are served by the state's
relationship, and substituting an employee believed to be more trustworthy.

Similarly, one who enters into a licensing agreement
with a state's regulatory body, and when he is in non-
compliance with the agreement, may find that the state
regards criminal prosecution as not sufficiently serving the
purpose of the special relationship. For instance, who is convicted of embezzlement of his client's trust funds is not
therefore immunized from disbarment. So, too, the man who having to his use of an automobile
is not under the law. But the statute, or have his driver's license revoked (or have demerits recorded against him that may eventually lead to such revocation).

Another illustration, which is closer to the University
because of its institutional aspects, is the situation in which
criminal or otherwise, under the unique University
criminal case cannot include (improvisation) for the
situation, although it also be subject to state sanctions. As the Wisconsin
Wisconsin Supreme Court stated a few years ago and has since reaffirmed. "Now rule is better set
Wisconsin than that all, prosecution under a
ordinance does not bar a prosecution for the same act
under a state statute..." (City of Milwaukee v. Johnson, 191 2 Wis. 358).

(11) The lack of "double jeopardy" or discrimination

In the illustrations we have given, there has been no running
affair of the "double jeopardy" type of objection, since that clause applies
to doubling of any sanctions for the same conduct but to
doubling of criminal punishment for the same legal offense. Hence,
Federal or state law in each of the above criminal offenses under the unique Wisconsin
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The restricted use of University sanctions under our proposed policy

We have been arguing that University sanctions are not made improper by the fact that criminal law sanctions may be applied to the same conduct. But this is not the same as saying that University sanctions may be used to remedy the consequences of conduct covered by the criminal law or whenever criminal sanctions have actually been applied. We recognize the heavy impact of suspension on the academic career of the student. But actual suspension occurs because the student was subject to military service; and his admission to other universities, while not impossible, will not be easy. We are also aware of the possibility that a University suspension (even though the legal concept of double jeopardy is not involved.

We therefore favor, as does the Crop Report, a careful limitation of the suspension sanction to those instances of serious misconduct which really do injure the interests of the university community. This is a result which can be achieved in terms of at least a temporary forfeiture of community membership.

We have considered what might constitute, in a case of intentional conduct that obstructs or seriously impairs University functions, a necessary and effective punishment of an act of conduct which is a consequence of criminal conduct. The University has the following circumstances to be relevant: (a) the magnitude and/or duration of the obligation or impoundment; (b) the fact that the act of conduct is accompanied by unauthorized authority or without authorization of the University; and (c) the fact that a student has been previously engaged in obstruction of University-sanctioned or University-authorized activity.

Students should be informed by our rules that circumstances of aggravation falling into one or more of these categories would warrant imprisonment. Even without imprisonment, sanctions such as suspension for periods up to, and including, one year are also sought (though care would be taken to avoid simultaneous proceedings), and that the suspension period would vary, depending on the magnitude of the injury caused by the conduct.

Our rules should further inform the student that, in cases where there are no elements of aggravation falling into any of these categories, the University will forego its own sanctions and revert to enforcement by the criminal law authorities, or, if, if the public authorities choose not to prosecute, seek a sanction less than suspension.

(2) Alleged inappropriatenss of university sanctions where the obstruction is of non-central university functions

This position is essentially the first of the middle positions described at the outset of this minority Statement, and is close to that of the Crop Report. We think, for example, that the placement function being not a central function, any obstruction or serious impairment of it would not be subject to sanctions (except that the unlawful assembly statute would apply to a demonstration obstructing placement).

Yet, once it is decided that the university should undertake the campus placement function, why should not administrative sanctions be used to prevent obstruction of that function? Should the university thus officially undertake? All the values and purposes analyzed earlier as part of "the rationale" for university sanctions, are more directly related to this function. So it seems unreasonable to ignore the impractical venture of drawing a line between a central function and a peripheral function. And it seems unreasonable to think of the placement function as a separate university process. The placement function, for instance, has some ties to the educational function; and obstruction to placement would be viewed as obstruction to the general membership of the University as a whole. An example is given of a placement function carried by an outside political candidate sponsored by a campus political group in a university building may seem less than a central educational activity, but how much less central is it? In the same building, either by an outside lecturer sponsored by the University Lectures Committee, or by a professor in a regularly scheduled class? We think it would be removed from the educational process that obstruction of a University Placement function only affects no educational interest of the University. Placement activities are to be viewed as no injury to University interests because athletics are labeled a "peripheral" activity. These cases raise elusive considerations of degree which might possibly influence the administrative hearing body's judgment as to whether or not the student violated any rules, including the responsibility of abiding (under pain of criminal penalties) by the rules of the community he is entering. The non-student did not enter into such a relationship.

The response to the discrimination argument can be made even stronger. If the student has not obeyed the requirement that the non-student downtown be subject only to the state criminal statute. In fact he would also be subject to the city criminal statute. If the same conduct occurred on campus he would be subject to the same state criminal statute plus - if his conduct violated Regent rules - the criminal misdemeanor penalties applicable to violation of such rules.

(3) Alleged failure to consider responses other than sanctions

The majority of this Committee seems to suggest, particularly in its initial observations, that the minority is too much concerned with the procedural protection of the individual. University activity must be confronted by discussions; that there should be a meaningful role for all members of the academic community in policy discussion; that there should be a possibility of a non-avoidance; that creation of an Ombudsman would help; that the University must not lose the confidence of a significant portion of its student body. It is doubtful whether any of these responses is at best an extreme response and one that should be employed infrequently indeed.

Let us say, first, that under our own proposals, any substantial University suspension (suspension) for obstruction will indeed be suspended by showing it is not required, except in an aggravated case of obstruction. Secondly, we have never derogated the above-mentioned alternatives to sanctions. On the contrary, a letter from this Committee to the University Committee early in this Committee's deliberations communicated our collective thoughts along these lines--with some specific suggestions. Let us reiterate that these suggestions are not alternatives to sanctions, but are rather part of the functions of an Ombudsman. The announcement also seemed to suggest another objective which all of us on the Committee might want to support more sharply than this: merging non-legal and legal functions, such as counseling and judicial functions presently in the office of the Dean of Student Affairs. (5) On the point that students must be given a forum for airing and discussing their problems and decisions, the Crop Report has already taken great strides in this direction. (a) The whole subject of what can be done to attract the students of campus and the decision-making on the campus, if it is to be treated with more satisfying specificity than appears in the majority statement, requires more time than this Committee can allow. We are particularly because the difficulties in the problem include a deepening student disenchantment with our educational methodology itself, and thus have no doubt that those values students are expected to serve. The subject, in short, is one which needs comprehensive thought and discussion by a broadly-based committee, and one other than the present Committee.

All in all, we disagree with the Crop Report.

The majority of this Committee has stressed that the university's position from imposing the most severe sanctions in the case of non-conviction of an offense (except in the aggravated case which is prosecuted criminally).

Yet the majority seems willing to ignore the extent of discretion involved in its own proposals. Its heavy reliance on the criminal law means that the University will have the same opportunity as the state courts to impose whatever sanctions it finds fit, without the possibility of subsequent to a criminal complaint. They apparently do not expect the University to exercise its discretion in such manner as to afford a "sanction" other than those which have suggested that the University should so exercise discretion.

The argument has sometimes been made (an argument disclaimed by the majority) that the University should have no discretion to impose sanctions other than the criminal. It is to the latter case--thus leaving it to the discretion of the district attorney whether a student is to be faced with a criminal prosecution. Indeed, the state courts, in effecting a sanction, even though we believe the amended system does.

As for the majority's stress on the discretion we permit to invoke University sanctions, we must observe that the majority's "one student, one violation" ground is a matter of argument in their position involves a discretionary determination of whether University sanctions are "necessary to... protect the access of all members of the University to the educational process"; whether a particular function is properly regarded as part of the "educational process"; whether criminal law or other "alternative procedures (towards a "sanction") for the student. But mutatis, we are prepared to concede a certain unavoidable blankness of the statute, but must observe that neither is the pot the color of the Delaware.

Furthermore, no apology need be made for the existence of discretion in the operation of criminal sanctions. Being an inevitable, legitimate aspect of the power of the state to protect and defend itself, it is to be approached not by advocating abolition or undue restriction but by an effective, systematic and comprehensive system of administration.
A final aspect of the majority's argument on the uncertainty of the use of criminal and administrative sanctions, is the conclusion that such interferences, in association with the broadness of the proposed regulations, can only exercise a chilling and intimidating effect on students who feel morally impelled to engage in protected activities. It is puzzling to believe our rules should be free from the kind of vagueness which leaves a student uncertain whether his conduct will be treated as legitimate or illegal. Today's Daily Northwestern a few days ago, for that reason we have formulated, in the Recommendations at the end of this Minority Statement, a definition together with illustrative examples of what constitutes "obstruction or serious or severe impairment" more specifically than does any university we know of, including ours, for any comparable standard or prohibition. The majority is really misleading the student (like other offenders in the legal system generally) more in that the actual sanction will be after adjudication. The student does know in advance what the maximum is, in addition to knowing the standard of conduct itself.

Moreover, while the majority is critical of the "breadth" of our proposed regulations, it fails to be specific themselves. They scorn the "attempt to pinpoint the university's misconduct by means of sterile definitions that ignore the reasons why some activities are to be regarded as "illegal", and express a preference for dealing in "general principles". The inconstancy of this statement with their proposed regulations is manifest. The student statement also fails to recognize that while ethical motives for peaceful conduct might somewhat legitimate the infrastructure on which the severity of the sanction imposed, such motives are properly excludable in the definition of the illegal conduct itself.

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e. Support for our views from other recent studies

Recent studies both at this University and elsewhere are generally harmonious with our approach to the problem of sancions.

(1) The August 1965 unanimous report of our own Remington Committee on Non-Curricular Life of Students (presented again in accordance, section 57) could not conduct which creates danger to persons or property in the University or which disrupts the educational process, is properly subject to disciplinary action by the University regardless of whether the conduct is a violation of city ordinance or state criminal law and regardless of whether action, in the form of prosecution or discipline, may be taken by other authorities..." (emphasis added) (p. 53). Inquiry of Professor Remington reveals that, in his opinion, the Committee in using this phrase meant nothing more than the word "disrupt" under the definition of "disrupting" in the third paragraph of the definition of "educational process". Thereby, for example, was not then a problem. So too when "political activity" was mentioned there was no occasion to discuss it in relation to the kinds of issues that have since arisen. The Report says that "student political activity, appropriate off campus, ought to be allowed on campus unless it is carried out in a way which is unduly and unnecessarily disruptive of the primary educational responsibility of the university"; and that violation of the "primary educational responsibility" through political activity on or off campus should be subject to disciplinary action by the University. The Remington Report does not say that any politically-motivated activity must be free from punishment. That the phrase, "primary educational responsibility", like the earlier phrase, "educational process", was not intended to have the delimiting phrase-of-art significance which the majority of this Committee would give it.

(2) The Crow Committee Report substantially follows the Remington Report's subject within the University discipline by listing (a) serious damage to University property, (b) serious continuing danger to personal safety of other members of the University community, and (c) serious harming the orderly conduct of University functions or process.

More explicitly than the Remington Report it recognizes the amenability to university sanctions of interferences with university function than the Remington Committee. The phrase "serious and rational ones. As for the nature of the interferences, the Crow Report does not mention the "serious threat to the public welfare, peace, or order" which is the equivalent of the Remington Report. For in addition to the above-quoted statement from the Remington Report on the three basic categories for condemnation of conduct the Crow Report states, in the definition of "serious" (p. 53): "Moreover disruptive of the educational process" (p. 53).

The Crow Report makes clear by examples that its criterion of "clearly and seriously obstructing or impairing a University function or process" is not to press a criminal charge, and to be satisfied with impos- ing its own sanction (though on individual such as another student would be free to seek criminal charges). Thus it is at the end of this Minority Statement build upon the Crow Report's standard of conduct and illustrative examples, and is basically harmonious with them.

(3) In answer to the unanimous Nov. 07 Report on Recruiting Policy stated (p. 11, Columbia Spectator Supp., Nov. 15, 1967): "It is a very serious offense for students to interfere, in the sense of [illegible] regulations, with the freedom of action of other students--especially with respect to, function at the University. . . Your committee [approves] the imposing of discipline for acts of such interference, warning, probable and suspension--in the case of the students whom the majority wants to prevent University activities or who physically attack other students. We recognize that such actions are not trivial. They may interrupt students' educations, form a part of their records that may disadvantage them later, and at present--increase their chances of minimal discipline, however, that in view of the gravity of these offenses, such sanctions are appropriate and should be applied." (Emphasis added).

(4) A Cornell Commission on the Interdependence of University Regulations and Local, State and Federal Law (Sennlicher Commission), which reported in April 1966, which announced that the functions of 5 professors, 6 students, 2 administrators and 2 who were both administrators and faculty members. They concluded that the University could not apply sanctions unilaterally to students who committed offenses on campus. They were more severe on distinct University interests, namely: (a) the operation of all members of the University community to attend their educations, objectives and activities; (b) the promotion of intellectual and cultural atmosphere throughout the University community; (c) the protection of health, safety, welfare and property of all members of the University community and of the University itself.

Where the misconduct was also in violation of law, this fact would only be "relevant to whether the University will choose to exercise its jurisdiction. With respect to student conduct violating the State Conviction Codes, the University should be able to take to the following practices: (a) Ordinarily, the University will not impose sanctions if public prosecution of the student is anticipated or if a court law enforcement proceeding is pending or the case. (b) Exceptionally, the University may impose sanctions for above misconduct, demonstrating flagrant disrespect for the basic integrity and right of the University.

(5) The January 1966 Berkeley Report by a joint-student-faculty committee takes essentially the same position. It is evidenced in the preceding reports--a fact which does not appear from the lengthy discussion of the Report by the majority of this Committee. Conduct violating the law is, however, not subject to University sanctions unless (1) it violates specific University rules, e.g., through plagiarism or cheating, (2) physically harms, or immorally threatens, a student to a member of the University community, or directly affects the affairs of the University community, or otherwise in the interest of the University community, especially by theft or malicious destruction, violates a "regulatory standard" of the University. These latter standards are determined by the students and the administration in consultation.Campus the Rules which regulate the free exercise of political and other forms of student expression, the right of students to associate and organize, the right of students to hold meetings or organize or plan activities. The purpose of the regulatory standards is to facilitate the free exercise of these rights. The standards are flexible and are taken from the normal educational functions of the University and. On the same page (p. 71) the Report recognises that the object of the Reflective Process (an educational process) is to discipline imposed only for offenses that impair the orderly functioning of the University. (Emphasis added). It is further stated that when the student is found both the University interests are protected standards in one of the above three categories, and is prosecuted in the criminal courts, the University will "normally" accept the court's judgment as the full disposition for the offense.

We further take note of the approval of the University sanctions against student obstructive conduct voiced by some extra-university organizations which have always had deep concern for the rights of students. Thus, a November 1965 statement of the Wisconsin Civil Liberties Union endorsed the following policy statement of its parent body, the American Civil Liberties Union: "In light of recent developments, the American Civil Liberties Union considers it important to recognize that it does not approve of demonstrators who deprive others of the opportunity to speak, to occupy public space, to assemble, or to obstruct movement. Guidelines on demonstrations should be determined by the administration and faculty in consultation with students, and the administration will consider the best means of resolution; and due process should be observed where infractions are charged." Similarly, an October 28, 1967 Council Resolution of the American Association of University Professors declares: "In view of some recent events, the Council deems it important to state its conclusion that the university may not allow student demonstrations on its property which have as their purpose the obstruction of the free flow of ideas and the unhampered exercise of speech and debate."
5. Recommendations

(1) Rule against obstruction or serious impairment of University-run or University-authorized activity

Students shall not engage in intentional conduct that obstructs or seriously impairs the carrying on of University-run or University-authorized activities on the campus. This includes activities either outdoors or inside a classroom, lecture hall, library, laboratory, theater, Memorial Union, or other place for the carrying on of a University-run or University-authorized activity.

For purposes of this rule, one engages in intentional conduct that obstructs or seriously impairs the carrying on of an activity when one engages in conduct which by itself or in conjunction with others' conduct prevents (and which one knew or reasonably should have known would thus prevent) the effective carrying on of that activity.

Examples: (a) A student would violate this rule if he participated in conduct which he knew or should have known would prevent or block physical entry to, or exit from, a University building;
(b) A student would violate this rule if, in attending a speech or program on campus sponsored by or with permission of the University, he engaged in disruptive, derogatory laughter, or other means which by itself or in conjunction with the conduct of others, prevented or seriously interfered with, a fair hearing of the speech or program, and (2) this occurred even after the instructor's bona fide effort to control the outburst of the speech or program, or after the bona fide effort to control the conduct of others, the instructor had made.
(c) A student would violate this rule if he seriously interfered with the teaching and learning process, and (2) the instructor had made.

(2) Limits on sanctions

(a) Suspension periods shall be for periods ranging up to 3 years, depending on the details. Whenever the suspension imposed is for more than 1 year, the student shall have the right after one year has elapsed, to petition annually for administrative reconsideration, on the ground that his future conduct can be expected to be free from those aspects of his earlier conduct giving rise to the suspension.

(b) In order to constitute a case where the suspension sanction may be imposed for obstruction or serious impairment of a University-run or University-authorized activity, it would be appropriate that a threshold of aggravation in one or more of the following categories would have to exist: (1) the magnitude and/or duration of the obstruction; (2) the conduct is characterized by or includes personalization of group sanction; (3) the conduct is characterized by or includes personalization of group sanction; (4) the conduct is characterized by or includes personalization of group sanction; (5) the conduct is characterized by or includes personalization of group sanction; (6) the conduct is characterized by or includes personalization of group sanction.

(c) Where such circumstances of aggravation do exist in one or more categories, the University will be free to seek suspensions, regardless of whether a criminal prosecution will also be brought. The University will make every effort to see that the criminal proceeding does not go on simultaneously with its own proceeding.

(d) Where such circumstances of aggravation do not exist in one or more categories, if the public authorities choose to impose a sanction; (2) if the public authorities do not prosecute, the University may seek to impose a suspension or other restriction on the student (e.g. reprimand, loss of specified privileges, probation).

J. Ray Bowen
E. David Cronon
Stephen F. Chalmers
James F. Marty
Samuel Mermin (Chairman)
Tom L. Walter
For the Minority

Similarly, we have found it unnecessary to parcel any University sanctions in a situation where the public authorities are prosecuting for conduct that obstructs or seriously impairs a University activity, unless one or more designated circumstances of aggravation are present if it were not an aggrieved case, and the public authorities were not prosecuting, the University would be free to seek such sanctions in addition to suspension.

The recommendation of a "double sanction" and other alleged defects in our position, we have also argued for more restricted applicability of University sanctions, and have attempted to formulate some guidelines.