

CRISIS REPORT

NUMBER TWO

**FOR THE INFORMATION
OF THE UNIVERSITY COMMUNITY**

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INTRODUCTION by Irwin Sperber

The fact that politically inspired suspensions are imposed on two rather than eleven students must not be allowed to obscure the central issue in this crisis: any political suspension of any student is a clear and present danger to the integrity of the University as well as to the survival of the anti-war movement. The selective, manipulative, and expedient penalties imposed on various anti-war activists do not diminish their politically and punitively inspired character. The right-wing elements in the Board of Regents and in Sacramento will be only temporarily appeased by this ousting of a few "troublemakers." Their voracious appetites will only be more whetted, and they will soon clamor for an even greater assault on campus-based protests and efforts at political education. Who will fall next on the list of sacrificial lambs? Another student activist? A faculty dove? A University official? Soon, the heavy hand of a "responsible investigation" (e.g., a discrete purge) will fall on these and other victims unless we insist that the precedent for any list of sacrificial lambs be reversed in principle and in practice immediately.

The Dangers Inherent in Political
Suspensions and the Fate of Our
University

I. A long series of events has led to the present crisis which affects all members of the academic community and which is bound to have major consequences beyond the distinct environs of the University of California at Berkeley. This community is faced with the increasingly abrasive and repressive policies of university administrators as well as the ideological and budgetary assaults from Governor Reagan, Assemblyman Mulford, and other right-wingers. The occasion for the original report was that the character and survival of this community were in peril; the events of the preceding weeks have not been a basis for a less pessimistic assessment of the crisis. Though still very much addressed to the issue of political suspensions, this supplementary report suggests some long-term directions to correct the "governance by crisis" mentality which seems to pervade all sectors of the University.

II. As the aftermath of the FSM crisis made clear, the suspension of students for political reasons leads to massive discontent, faculty unrest and resignations, and the dismissal of administrative officials. The arbitrary suspension of student leaders, resignation of faculty, and dismissal of administrative officials have never solved any educational problems on this campus, never improved the working relations among the students, faculty, and Administration, never contributed to the normal functioning of this University or to its autonomy and integrity. Suspensions, resignations and dismissals have only compounded these problems, worsened these relations, and opened the door to even greater interference with campus affairs by partisan political authorities in Sacramento. But University officials are already aware of these facts: the pressures which led to their plans for the suspension of anti-war activists on this campus are not derived from any hopes of solving problems of an educational nature or improving relations among students and faculty and administration or ensuring the autonomy of this University. These pressures and plans derive from an unannounced but now evident national effort to silence the increasingly effective voices of the anti-war movement. They must be recognized and vigorously resisted.

III. Among the students who face suspension are the most dedicated and highly regarded teaching assistants in the University, those most associated with the goals of educational reform at Berkeley (e.g., with support for the "Becker case" and similar key issues), and, of course, those who work longest, hardest and most effectively in the anti-war movement.

What can this mean? The University has become atavistic, and the sources of this political conservatism is the strong right-wing pressure to which the Chancellor is bowing. The following analysis of the present crisis indicate what can be done to ensure the survival of this academic community.

Although opposition to the war is the most pressing task of the student movement, the two-pronged nature of this struggle must be kept in mind. First, protests are aimed at educating citizens about the inherent tendencies toward war built into the military-industrial complex and the dehumanizing effects of a capitalist system; the racist and genocidal aspect of U. S. policy in Asia, Africa and Latin America (especially in Vietnam, Indonesia, Bolivia, Rhodesia) also requires public discussion. Second, such protests are now becoming effective and therefore highly objectionable to the U. S. Government, to the industrial interests which profit from massive war appropriations, to the paramilitary and secret police bureaucracies which flourish in times of "national emergency," and to the indigenous right-wing movements (ranging from CIA-subsidized editorial policies to the constituencies of Ronald Reagan, Max Rafferty and Don Mulford) sustained by three decades of Cold War hysteria. These organizations and interests are threatened, and they react by exerting great pressure on university officials. They demand that campus activists be severely punished and that the anti-war movement be weakened so far as possible. Control over general educational funding and threats to withhold prestigious research subsidies are some among many ways that this pressure is exerted. But the effect of political suppression is inevitable: students are suspended, faculty members are forced to "support our Chancellor in times of crisis," and university officials adhere increasingly to reactionary and punitive policies or are themselves replaced. University policies increasingly reflect the "need for law and order," constricting versions of "academic freedom" or "free speech," and such discrete euphemisms as "enlightened patriotism" as justifications for the systematic suppression of student activists and faculty dissenters.

Opposition to the war in Vietnam therefore requires the dual effort (1) to change national policies directly responsible for the war and the military-industrial complex which reinforces those policies and (2) to bring about educational reforms which ensure students of an effective voice in making academic policies and a guarantee of due process of law in accordance with the U. S. Constitution. Activism in the service of democratizing and humanizing American society leads to a peaceful foreign policy as well as a liberated academic community in place of a "liberal" multiversity. At the same time, efforts at educational reform are essential to the creation of a democratic university congenial to the organization of anti-war activity and the democratization of American society. Activism in the service of peace and efforts at educational reform are therefore complementary to one another rather than diversionary or mutually exclusive tasks.

The new gains made by VOICE candidates in the ASUC elections are crucial not only for purposes of educational reform but also for the progress of the anti-war movement. These gains should be vigorously defended, and are particularly timely in view of the growing signs of "enlightened patriotism" and the increasingly dictatorial enforcement of the Chancellor's definition of "academic freedom." They can help to offset the Chancellor's announced intentions (a) to transfer the legal authority and program funds now under ASUC jurisdiction to a committee staffed by men of his choosing, and (b) to increase the number and severity of penalties (e.g., suspensions) for students who participate in protests sponsored by MAPS and other campus organizations.

WHEN FREEDOMS CONFLICT: On the Uses of Coercion and Disruption
by Michael Lerner

The concern about limiting free speech on this campus is justified. Only with great hesitation and after considerable soul-searching and reflection may one advocate such a limitation under certain conditions. Although one does not lightly interfere with the rights of others, there are times when one is forced to make a choice in which, regardless of what one does, the rights of others will be infringed. Free speech is in general an extremely important value. But other values are also cherished and, when these various values collide, choices must be made among them and they must be arranged in a kind of hierarchy. It is clear that the right of the Vietnamese peasant to live in peace and dignity should be higher in any scale of values than the "right" of some Americans to express their paranoia about the "yellow peril" or their theological anti-Communism by bombing Hanoi or by making napalm for someone else to use to burn civilians. This does not mean that free speech has been repudiated or forgotten, but only that there are certain conditions under which higher values may conflict with and limit this important value.

We are not alone in imposing limitations on this value: the University itself sometimes avowedly limits free speech under certain conditions. (See Professor Foote's essay elsewhere in this Crisis Report for examples of this point.) So the question really is, which values do you hold and which ought the University to hold? It is evident from the behavior of the Administration and of some sectors of the faculty that their highest value is "civility." They do not hesitate for a moment to deny the use of university facilities to students who are "disruptive" or who interfere with academic convocations. Consonant with the Regents' resolution of October 20th, they gladly restrict our freedom to organize what they judge (prior to the event) to be illegal activity. All other values and freedoms, including the right of the Vietnamese peasant to life and the right of the American student to organize against the war which deprives the Vietnamese peasant of his life, are readily restricted by the faculty whenever civility is imperiled. Such is the faculty's hierarchy of values.

What of those who claim that free speech is their highest value, that it is even more important than the preservation of human life and dignity? We witness the tragic spectacle on this campus of those same persons remaining noticeably silent when the free speech of students is threatened. Academicians have the right to hold to their values -- but we demand that they be consistent in applying their values. Such men seem concerned about free speech only when upholding this value serves the purposes of the forces interested in human suppression. But they are instructively silent and mysteriously aloof when the rights of participants in the student movement are denied or suppressed. Then we are perhaps justified in denouncing the hypocrisy that has become the trademark of so many "liberal" professors and in suggesting that they uphold free speech only when their sense of civility is threatened. We can reasonably infer that the value of civility (or perhaps the cult of civility), however much it conflicts with the values of liberty and democracy, is what the faculty really espouses under the banner of "free speech" and "academic freedom."

We espouse a different paramount value. We believe that a university exists primarily to promote knowledge for the purpose of liberating men and giving them the maximum degree of control over their lives and environment. Our highest value is liberty -- the right and ability to determine the circumstances of one's own life in accordance with the highest development of human knowledge and intellectual capacity. For this reason, we have always demanded radical democracy for ourselves in the University, for the oppressed black people in the ghetto, for the Vietnamese and Bolivian peasant, for the middle-class white American who ultimately lacks control over his own life.

But one need only look at the CIA and Dow to see immediately that they contribute systematically to the suppression of human liberties, ensuring that neither the Vietnamese peasant abroad nor the National Student Association at home exercise self-determination. Their activities do violence to the highest purpose of the university.

Because of their activities in suppression of these human values, we must say that here is a case where free speech is properly limited by a higher value.

We do not suggest that such groups should be prevented from voicing their opinions. However, CIA and Dow are not on campus to advocate or defend political views, but to recruit personnel to carry out their established activities. This suggests an important fact of life about the free forum. Regardless of any argument and no matter how convincing any debate or teach-in may be, the right of the people in Vietnam to live in peace and dignity has been flagrantly ignored and ruthlessly violated. The arguments of the free forum have no effect on the people and forces in this country interested in seeing this situation continue. They will use all the coercion and violence at their command to ensure its continuation. They currently monopolize the "legal" means of violence to prevent any change in these policies or any protest that promises to be an effective one.

But what right do we have to impose our values on others? Is it not subjective to say that we condemn the war in Vietnam? No. The war is wrong because it involves the systematic destruction of a civilian population by the mightiest military force in the world to advance its political and economic interests. The incalculable suffering and destruction are wrong. They are not wrong for us and the Vietnamese and right for Hershey and Johnson and Ky, but plain wrong. There are times when a government has become so corrupt and is using such evil devices that its citizens must use whatever force is necessary to prevent it and those who would be its allies from functioning -- from the draft induction center and the Dow recruiters to the Chancellors who use suspensions against the anti-war movement.

But, one might argue, right-wingers also say that force should be used to stop those who are considered immoral. The right-wing would be justified only if it used force legitimately in the interests of human liberation and if it had to use force because others were using force effectively against it.

The choice that one faces is clear: one can declare opposition to inhuman policies in the free forum and go home while the violence continues in the belief that he has done his duty, or one can feel called upon to stop these hideous and genocidal policies. If the latter course is chosen, one will inevitably violate someone's rights to be left alone and someone else's rights to free speech and still another person's rights to earn a living (for jobs will be lost if the war is ended). If one complacently goes home, U. S. imperialism will run smoothly; more people will be dominated and more will be killed, and one tacitly serves in this case as an accomplice to the great genocide in Vietnam. Not a pretty choice, but not a pretty world.

There is no escaping the dilemma: we must make moral judgments and decide what is right. Who is suppressing whom, who is invading whom, whose liberties are really at stake (the Vietnamese' or ours)? Such a formal principle as "never violence and disruption" does not solve the dilemma. Those who rely on such a principle are unwittingly opting out of the struggle against imperialism and oppression while the violence committed by the U. S. continues to be directed internally against the black people and externally against the Vietnamese. Such violence can continue only so long as people with good intentions agree to play by the rules of the game set down by those whose violence is dubbed "legal."

. . . in a dying world, creation is
revolution. - - Waldo Frank

CONSTITUTIONAL DANGERS ARISING FROM POLITICAL SUSPENSIONS: The Departure from the Academic Senate's Resolutions of December 8th, 1964 by Caleb Foote

Caleb Foote is a Professor of Law and Criminology at the University of California, Berkeley. The following statement is condensed from the Daily Californian, Nov. 15, 1967, p. 20, with Professor Foote's permission. The D. C. version has no title, and the present editor assigns the one above which he believes is faithful to the original article. It deserves the widest possible audience.

My overriding responsibility as a faculty member and my estimate of the magnitude of the present threat to student academic freedom, and the recent ominous statements by the Chancellor, impel me to make this statement.

The Academic Senate resolution of December 8, 1964, which was adopted by a vote of 824 to 115 at the climax of the Free Speech controversy, included the following key provisions:

(2) That the time, place and manner of conducting political activity on the campus be subject to reasonable regulations to prevent interference with the normal functions of the University; ...

(3) That the content of speech or advocacy should not be restricted by the University. Off-campus political activities shall not be subject to University regulation. On-campus advocacy or organization of such activities shall be subject only to such limitations as may be imposed under Section 2.

This language does not attempt to draw a line between advocacy and organization. Instead, it clearly provides that there shall be no university punishment of either unless the activity interferes with the normal functions of the University. According to the Academic Senate's Emergency Executive Committee Report of December 27, 1964,

... violations of law will be handled by civil authorities; violations of University rules concerning time, place and manner of conducting political activity will be handled by the University. If laws and University rules should be simultaneously violated by the same act, the University will normally accept the court's judgment as the full disposition for the offense.

The committee said that this policy was "fundamental" and that during a then-pending Regents' rules study "we will reaffirm with the greatest vigor that the principle must be adhered to on the Berkeley campus."

The policy saves the University from involvement in disciplinary activities in which, because they involve the interpretation of state or federal law, the University has little experience or competence. ... The reasonable assumption on which the entire campus relied for over two years was that the December 8th Resolution was governing law and that on-campus organization of off-campus activity was restricted only by the time, place and manner rules. Against this background, the Alameda County Superior Court issued its temporary restraining order on October 16 enjoining the administration from permitting the use of campus facilities for Stop the Draft Week activities. This unconstitutional restraint, which banned advocacy as well as organization, effectively nullified the December 8th Resolution and the Regents' policy declaration of December 18 [affirming that speech shall not be restricted "beyond the purview of the First and Fourteenth Amendments to the U. S. Constitution"] and was a flagrant infringement of student academic freedom. Unfortunately, the University, which could have obtained higher court review of the order's legality within a matter of hours, took no court action during the week that the order was in force. Instead, it aggravated the problem by imposing a patently unconstitutional certification requirement as a condition for any campus meeting and going beyond what the injunction required the University to do.

The University foreclosed any possibility of legal relief for the students, whose freedom is what was at issue but who were without legal standing themselves

to fight the injunction; the certificate demonstrated the kind of oppression which may result when the University enters the business of regulating free speech.

It is difficult to understand the Chancellor's confidence as he enters a constitutional thicket where Supreme Court justices and constitutional law scholars cannot agree among themselves. He stated on November 7:

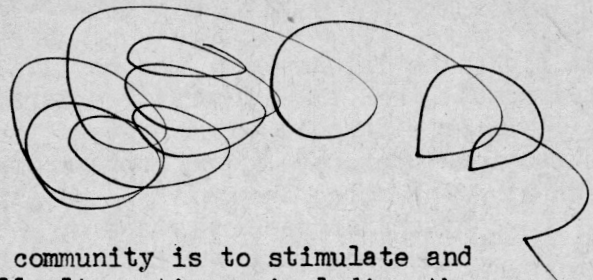
My colleagues are aware of the profound difficulties of discriminating between advocacy and organizational action. I think our credentials to make this discrimination with full solicitude for political rights have been repeatedly demonstrated.

It is one thing for the state to prosecute allegedly unlawful speech in its criminal courts, where the defendant has all the protections of the Bill of Rights, appellate review in courts with specialized skill in resolving constitutional questions, and most important, a separation of powers among prosecutor, a disinterested jury and an independent judiciary. When the state chooses instead to impose sanctions for speech violations through another of its instrumentalities, such as the University, in a forum in which few if any of the above attributes apply, a constitutional tribunal may well regard such a procedure with a jaundiced eye.

At Berkeley, the Chancellor's role is inevitably confused. Under Regental policy he is the campus' chief executive and must formulate policy, including policy on discipline. The constitutional and academic freedom problems arise from the fact that Regental policy also gives the Chancellor final judicial authority for student discipline. The statewide policy is intensified by its local implementation, where initial judicial authority is vested in the Deans, the Student Conduct Committee or a Hearing Officer --- all controlled or selected by the Chancellor.

While university adherence to constitutional law is an essential element of academic freedom, the two are not coterminous. The Fourteenth Amendment embodies the minimum demands of freedom which a state or state instrumentality cannot deny. Academic freedom implies a higher standard molded to the particular requirements essential for a university in carrying out its functions. Insofar as faculty are concerned, this has long been recognized; but the academic freedom of students is a relatively newer conception. It is enough for civil society merely to tolerate free speech; a university worthy of the name will try to induce its students to undertake searching re-examinations of settled dogma, unchallenged assumptions and cherished beliefs.

Under conditions in which the massive size and pervasive technology of society increasingly threaten the right of effective dissent, the morality of various forms of civil disobedience and resistance pose some of the most important and perplexing intellectual and moral dilemmas of our day. Personal responsibility in the face of the Vietnam war is quite properly a center of discussion on this campus. The age of our students naturally intensifies this issue in their eyes. Many of them see in this war evils which parallel in enormity the bondage of Negro slavery or Nazi genocide, and there is growing nonstudent opinion in this country and abroad which would agree. In this situation, it is unreasonable to expect that none of the student thought, discussion and growing conviction will spill over into unlawful acts. Particularly where the line between legality and illegality is so vague, the University's present policy would seem certain to silence, by the threat of academic discipline, expressions of opinion which would be lawful. One telling illustration reported to me concerned some students who asked whether a particular form of anti-draft activity would constitute prohibited organization. "I don't know," the administration spokesman is reported to have replied, "but to be on the safe side you better not do it." Keeping students (or faculty) "on the safe side" is not a policy worthy of a great university.



Conclusion

The central educational role of an academic community is to stimulate and protect insofar as possible the examination of all alternatives, including those which are highly controversial or possibly or probably illegal. The style of this dialogue should balance a demanding intellectual rigor with respect for the students as individuals and empathy for their situation.

Where students become involved with federal or state prosecution, the University cannot grant immunity. Where their activity disrupts University functions, the University will have to respond, though hopefully this response will temper discipline with patience and a sensitive awareness of the profound agony and desperation which this age has bequeathed to many of our students. Beyond this, however, it need not and should not go into the field of law enforcement. The Regent's policy of October 20th, to forbid the organization and carrying out of unlawful acts on University facilities, and current indicators of how the Chancellor plans to enforce that policy unnecessarily frustrate this educational role. They represent a capitulation to the kinds of outside pressures against which we should be erecting a bulwark to protect academic freedom. They rest on the unfounded assumption that the state and federal governments are unable or unwilling adequately to enforce their own laws. They corrode the student disciplinary practices which should emphasize counselling and rehabilitation. They introduce a deterrent emphasis which is improper in a university and doubly improper where the protections of criminal procedure cannot be guaranteed.

I urge you to reassert the policy of the Resolution of December 8th as a principle of student academic freedom and, in the words of the Emergency Executive Committee report of December 27, 1964, to "reaffirm with the greatest vigor that the principle must be adhered to on the Berkeley campus."

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