

Meeting in President's Office

February 17, 1970

Present: President Jamrich, Vice President Rombouts, Dean Kafer, and Student-Faculty Judiciary members -- Mr. William Lake, Chairman; Mr. William Hafeman, and Miss Linda Edmondson, students; Mrs. Roberta Verley, Mr. Thomas Buchl, and Mr. W. David Hagans, faculty.

President Jamrich called the meeting for eight o'clock, Tuesday morning, to discuss the observations he wished to make to the Student-Faculty Judiciary Committee regarding the proceedings of the hearings being held in the cases of the black students who were involved in the sit-in in Dean Kafer's office on December 17 and 18.

As Dr. Jamrich opened the meeting, Mr. Lake presented him with a memorandum stating their case in wishing to dismiss the charges against the remaining five black students whose cases are yet to be heard. All present read the memorandum.

Dr. Jamrich mentioned briefly the communication he had received from Dr. Meneghel, Chairman of the Academic Senate, a copy of one addressed to Mr. Lake regarding the framework within which the representative committees operate. He indicated that he had requested that Dr. Meneghel, Dr. Allan Niemi, Mr. Harry Campbell, and Dr. Rombouts, Dean Kafer, and the President would meet subsequent to this meeting to discuss Dr. Meneghel's letter and its reference to procedural guidelines for the Student-Faculty Judiciary.

With regard to the memorandum of the Judiciary, Dr. Jamrich said:

"All of this past week I have on three different occasions spent three or four hours with members of our staff and with our legal counsel, each time addressing myself to the question, should I intercede, should I dissolve the whole hearing process for this group of cases. At the same time I should say that I am convinced basically that the provisions for due process in hearing cases, as generally contained in the Student Code of Conduct, is sound. For us to discard that -- we would have nothing to replace it that would be anywhere near as adequate in representing the legal framework in which the University finds itself today. That document represents the carefully delineated steps to which a student goes who has been involved in an infraction. We are committed to this setting, and it

it is a matter of making it work. It's easy from time to time to say that it's a cumbersome process and why doesn't the President exercise leadership and make a decision. It's precisely that problem which is more critical and potentially dangerous for the academic community. It is that kind of arbitrariness which has caused so much of the turmoil, and it is ironic that we find ourselves in this dilemma. Now let's turn to your memorandum."

Mr. Lake: "This memorandum was written on Sunday, before we had received Dr. Meneghel's letter. His letter had no bearing on our memorandum."

Dr. J.: "As I said, I have held back each time I have thought of interceding because if we have a set of guidelines, if we have a Judiciary -- somebody has to be available to look at the case and determine whether a student is guilty or not guilty, or whether there is insufficient evidence. Without your convening, how can you tell that there isn't significant evidence on each of the cases? My own feeling is that a case ought to be at least brought before the court, and you as the Judiciary need to decide this. To say you won't hear the case is not appropriate. We have a process to hear alleged rule infractions -- to guarantee due process. We have to have somebody who will hear a case."

Dr. J. continued: "I know that you six people have devoted tremendous time and energy, and it has been an indescribable drain on your emotions as well as on time and energy. It will happen again in some form or another with one or another group of students. I know what this means to you. As committed as we are to this process, I know I speak for myself and the University to say to you thank you for taking the kind of time and energy to do this. You were confronted with a situation which brought with it many unexpected features. My general reaction to the memorandum would be that I think you ought to continue the hearings."

Mr. Hagans: "What is the nature of our jurisdiction with relation to the Dean of Students Office? There is very little in the Student Code to help the judicial board. Suddenly we had things we couldn't cope with."

Dr. J.: "You mean the mechanics --"

Mr. Hagans: "Yes. For example, can we adjourn? We tried to avoid battlelines by suggesting this is not the appropriate time nor the appropriate group."

Dr. J.: "What would you think on the basis of this experience of providing the Student-Faculty Judiciary or any other group hearing a case on certain occasions a hearing agent? To bring from the outside an experienced jurist and/or legal person who would bring with him the answer to the mechanical procedure to help conduct the hearing? This would provide for the elimination of irrelevant discussion."

Dr. Buchl: "This would relieve -- this would be a tremendous help. To bring in a referee -- we have a lack of experience and knowledge in this area. It would drift into an uncertain realm, and all at once we would be confronted with the social issues, not the sit-in. I think a referee would be an excellent idea. With regard to insufficient evidence -- perhaps having a fact-finding committee before a case is held would be helpful. Yes, there has to be some group to hear cases, and also a group to find out if a case should be heard."

Mr. Hagans: "If there were a way that the Dean of Students Office didn't have to perform all of these functions . . ."

Mrs. Verley: "Shift the responsibilities to another office . . ."

Mr. Hagans: "They become the complainant and everything."

Dr. J.: "This case couldn't have been "better" to get all the elements of incongruity together at once. They involved the Dean of Students and the Vice President directly."

Dr. Kafer: "People are questioning, how can this be because we know there was a demonstration, we know damage occurred. We know Dr. Niemi was held and the President and Dean Kafer were held out."

Mr. Lake: "Yet the only thing we can say is "guilty" or "not guilty."

Mr. Hagans: "There is no way we can handle it."

Mrs. Verley: "You're saying the evidence is inconclusive."

Dr. J.: "I have dictated a memorandum about this. The Board of Control and I who have sat on the side are asked the question -- certain things did happen -- you do need to state that a decision was reached on this basis. Does the Code require this?"

Dr. Kafer: "It requires giving the student a rationale but not to the public. The Judiciary is finding this very difficult. There is an element of guilt, but on the basis of the evidence and on the basis of the process, they haven't been able to be conclusive enough to say "guilty" but are not able to explain the evidence and the process to the community. They find this tearing the community apart and no worthwhile thing coming out with the "not guilty" decisions. I don't see any value coming from

going through this five more times unless there can be new evidence presented, or we can present our rationale."

Mr. Lake: "If there is no new evidence, there is no reason to hear five more cases."

Mrs. Verley: "No."

Mr. Lake: "We feel it is doing more damage to the University community, causing hard feelings, nothing productive. Even if we heard the five cases, they would be found "not guilty."

Dr. Kafer: "The cases that are coming are identical to the cases which have been heard. I can personally argue with that. In the eyes of the Judiciary there has not been conclusive evidence for them to say "guilty" and develop a penalty. In that kind of a situation we're not going to be able to present new evidence. It hinges on the authority to be in the office. Presence does not make guilt. The whole case lies here. We have nothing more we can say. We saw them there, and we're maintaining that presence there does make them somehow responsible. Beyond that we can't say anything. There is no new evidence."

Mr. Hagans: "We could have made the memo longer to support each of the points, but we didn't think it would serve a useful purpose."

Dr. J.: "In your opinion mere presence does not constitute their being guilty."

Mr. Hagans: "No."

Mrs. Verley: "Witnesses on both sides say many were not present, and the identification of people is questionable."

Mr. Hafeman: "There were no witnesses to the damage. Some were not identified after the damage."

Dr. J.: "Let me jump to another question. After these five, a group of seven will come before the hearings. Is there any point in hearing those seven?"

Mr. Lake: "Yes. They have been identified as leaders. Dr. Niemi was requested to speak to the leaders."

Dr. J.: "Is there any point in going with these seven without a referee-type person?"

Mrs. Verley: "We're going to have even more difficulty in hearing those seven. I'm sure there will be conflict as to their presence elsewhere at the time; the members of the Judiciary will be witness to the fact that certain people were with the others being heard."

Mr. Hafeman: "For example, one of them served as counsel for Griffis."

Dr. J. "One way of going at it on the basis of your experience and in anticipation of this kind of problem would be to request a referee."

Dr. Buchl: "These individuals are much more verbal. I can see much more irrelevant discussion from these six than from the ten. A referee could play an important role between the complainant, the defendant, and the Judiciary."

Dr. J. "There are precedents for this. This is being used with increasing frequency throughout the country."

Mr. Lake: "I am wondering about changing the procedure in the middle of the stream."

Dr. J. "How much in the middle of the stream is it? We have not heard these seven. In light of your experience, do you want to prepare differently for the upcoming hearings?"

Mrs. Verley: "The complainant and the defendant should prepare."

Dr. J.: "The mechanics need attention. You're like a jury asking questions for clarification, like a referee, and . . ."

Mr. Lake: "We're not only the jury -- we're the prosecution and the defense. Actually, judge, jury, prosecution, and defense."

Mr. Hafeman: "With a referee we could cut down a lot of the irrelevant discussion."

Mrs. Verley: "It would certainly be better to have a referee rather than having what a person in the audience said."

Dr. Kafer: "I think in addition to a referee, in trying to correct procedural problems -- always before the committee has served as prosecutor and defense counsel. The Judiciary is trying to determine what did happen. The student would tell us the story and then we made the decision. The procedure broke down in having the counsel as such preparing a case for the Dean of Students Office. It's legal all the way now, and I question the value of that kind of hearing system on a university campus."

Mrs. Verley: "We have followed carefully the guidelines of due process."

Dr. Kafer: "It has thrown it into a quasi-legal situation."

Dr. J.: "To whom does the Student-Faculty Judiciary give their decision?"

Dr. Kafer: "Their decision is final and is conveyed to the student."

Dr. Jamrich: "Who executes the decision?"

Dr. Kafer: "The Dean of Students Office. If not guilty, it is not so much of a problem, but if guilty and a penalty is required, this is not the function of the Judiciary."

Dr. Kafer again: "They have made a recommendation to stop the hearings at this point, feeling that no worthwhile benefit is coming from them. I agree that from the point of view that they do not have the jurisdiction to decide whether to dismiss the charges, and based on their recommendation that we withdraw the remaining five cases, if we could not accept their recommendation, then they have no alternative but to resign. Now it becomes a jurisdictional confrontation."

Dr. J.: "I'm not sure I come to that conclusion. The Student-Faculty Judiciary has now recommended that we discontinue these hearings at this point for those five students. At the same time I would maintain that there must exist a judicial body that will hear cases. I don't come to the hard-nosed conclusion -- ; you're recommending to us that on the basis of what has happened, you do not think it worthwhile to continue -- and if we don't accept your recommendation, I don't believe you should resign. We have you as a hearing body, and somebody has to hear them. This is not a vote of no confidence but a vote of confidence. For whatever the reasons, somebody has to at least look at the case and not prior to the case being heard decide not to hear it. "We won't hear that case" is not a workable process in applying the judiciary process."

Mrs. Verley: "You've got to have someone to listen."

Dr. J.: "Maybe we need a fact-finding group to decide whether there should be a case. Dr. Kafer is probably right. This stems from the original conception of the Judiciary. Let's find out what happened. Do we really want to become so legal? Quasi-legal? Do we want to invite the civil courts into the situation?"

Mr. Hafeman: "Well, all the cases are the same, so we feel there is no reason to hear the others."

Dr. Buchl: "It's not working, but do we have the jurisdiction to call

a halt when after looking at a case we see a trend? We feel that someone has to have the jurisdiction to stop it. We have heard the case and want to stop the proceedings."

Dr. J.: "I would interpret that the Student-Faculty Judiciary does have the right to discontinue hearings on cases it has before it. In some manner you have some knowledge of the case, which is different from the other point, namely that you have heard about a case and decided you would not hear it. We can live with the jurisdiction that we have before us the following cases and on the basis of what we know about them, we are dismissing them."

Dr. Kafer: "Something Dr. Maust said yesterday -- a vital point. One of the reasons that the Judiciary should not have the authority to determine yes or no is that after ten cases, because of the process, irrelevant information, procedural difficulties, they can't effectively adjudicate a situation by dropping five or seven cases. Then it becomes the game to jumble the process, to manipulate the process so that they come to this conclusion. If they can recommend dismissing the charges, it becomes someone's final decision."

Dr. J.: "Do you find the recommendation step reasonable?"

Dr. Buchl: "This is frustrating in this particular case. It's on the basis of no new information available, and if there is none to be brought before us, we have heard the cases."

Dr. J.: "And yet that really remains a recommendation. There is still the possibility the complainant would . . ."

Dr. Kafer: "Even though there is no new evidence, I really feel I had not presented my case as a complainant and feel that you as the Judiciary has not faced the real issues, and I again wanted to try to convince the Judiciary that I was right and you were wrong, as a complainant should I have that right?"

Mrs. Verley: "We have heard the cases, but the names are changed."

Mr. Lake: "We don't want to say they are not guilty, but we want to dismiss the remaining five cases."

Dr. J.: "You should give me a recommendation to get a referee for any hearings hereafter. That the remainder of these five cases should be dismissed. Suggest that here are the four or five things most difficult. That the Judiciary has had to serve as prosecution and defense -- to make judgments as to irrelevance or relevance. Take a few minutes to work on your recommendation."

Mr. Hagans: "Should we discuss the seven who are being held down town?"

Dr. J. "What recommendation would you make to have a jurist conduct the hearing for you? That's the short-term part. The long-term plan may suggest we need nine or ten members on the Judiciary."

Coffee and tea and rolls were ordered for the Judiciary to convene while the President met with Dr. Meneghel, Dr. Niemi, Dr. Rombouts, Dr. Kafer, Mr. Campbell, and Dr. McClellan in the Pioneer Room.

Meeting adjourned at 9:30 A. M.

JSB