DARTMOUTH COLLEGE

Hanover, New Hampshire

Judgment of the
Black Judiciary Committee on
"The Shockley Incident"

November 25, 1969

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Introduction

1. Seventeen students were charged on October 22, 1969, with violating the College regulation on Freedom of Expression and Dissent. These students, who are all black, took part in a hand-clapping demonstration which prevented Mr. William Shockley from making a scheduled speech in Steele Hall on October 15, 1969, under the auspices of the National Academy of Science.

2. The students elected to have the Black Judiciary Committee adjudicate their case. Accordingly, on October 27, Proctor John O'Connor handed over the pertinent documents to the Committee which, after deliberate and careful investigation, reports as follows:

I. The Historical Context

3. In considering the complex issues raised by the Shockley incident, the Committee felt it necessary, first, to view the event in historical context. We were conscious that theories concerning the supposed inferiority of black people (such as those advanced by Mr. Shockley) have been offered in the past to deny black people the rights and privileges enjoyed by other races.

4. White America inherited many of the prejudices and social inequities of Western Europe but due to the peculiar institution of plantation slavery in this part of the world, entrenched beliefs and attitudes of white America were specifically directed against

the freedom--the physical, social, political and economic freedom--of black people. Before the Catholic Church could rule, in the name of justice, law, and science, pure and theological, that Africans had souls, numerous theories were advanced purporting to show that the black race was inferior to other races of the world. Centuries after the Church had apparently settled the issue, a United States Senator could declare: "the great God who created all races never intended the negro, the lowest" to have equal power with the highest, the white race.[1]

5. To the religious argument, incapable of proof, was added spurious biological evidence adduced to keep the black man in a position of inferiority. Black men fought side by side with white men in the Revolutionary War that won freedom for America. But the Constitution adopted in 1789 to enshrine that freedom regarded black men in bondage as three-fifths human.[2] Nor were free blacks much better off. A Supreme Court ruling in 1857 wrote of black Americans:

> they are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and <u>whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them...</u>[3] (Emphasis supplied.)

6. During the Civil War some two hundred thousand black Americans fought in the cause of slave emancipation. But the Black Codes enacted in several states following that war effectively reduced black people to second class citizenship. "These laws were based on the explicit assumption of Negro inferiority and sharply restricted the mobility and personal liberties of former free Negroes and new freedmen alike."[4] The net result of repeated documented events at different periods of history have been injustice towards black people based primarily on skin-color as evidenced by slavery, discrimination, and colonialism.

7. In the light of this historical evidence, the Committee could not ignore the probability that Mr. Shockley's revival of the myth of black inferiority might find credence with an American public forty percent of which, according to a 1968 survey by the Columbia Broadcasting System, can be defined as racist. Mr. Shockley's persistent attempts to gain extensive publicity for his views are well known, and in the widely distributed Time Magazine he has been quoted as an authority on genetics in an essay on "Race and Ability"[5]..

8. It is possible to predict the chain of events that might ensue from speeches such as Mr. Shockley's. White people accepting his argument as valid could use it in good conscience as a rationale for actions inimical to blacks. That this is no mere hypothesis but a real fear of black people is evidenced by the statement submitted to the Committee by the Afro-American Society:

> Many whites fail to realize that what Shockley is saying, used in the present situation, can prevent a Brother from obtaining gainful employment, buying a home, obtaining a loan, etc. And this is the crux of the matter and is the only thing that the Brothers tried to prevent from occurring.

Mr. Shockley has tried to win support for his thesis among the nation's politicians. Should his attempt succeed in any significant degree, a process of law revision could begin which might reverse many of the legal advances painstakingly achieved over decades in trying to eradicate racial discrimination. Even a slight revitalization of racist tendencies in a country where racism is so ingrained should be a matter of grave concern to all citizens. The Committee felt strongly that in the particular historical context outlined above, every priority should be given to prevent the spread of racism or of ideas which might lead to the commission of racist acts.

II. The Issue of Free Speech

9. In their communication to the Black Judiciary Committee the members of the Afro-American Society stated that they "adhered to the notion of freedom of speech but not to freedom of slander." Though their statement reflects a deeply felt sense of injustice, it has in our opinion also important legal significance. For if Mr. Shockley's proposed address was in fact defamatory, it could not claim the constitutional protection which the First Amendment affords and "free speech", academic or otherwise, is not an issue. There would then be no reason to deplore the incident as a "clear and serious violation of the principle of free discourse" as reportedly stated by a high-ranking member of the College administration.[6]

10. It has long been understood that freedom of speech has never involved the right indiscriminately to utter words injurious to individuals or groups. A most devoted and concerned American student and advocate of free speech, Professor Chafee of Harvard, stated the matter succinctly:

> The normal criminal law is interested in preventing crimes...It is directed primarily against actual injuries. Such injuries are usually committed by acts, but the law also punishes a few classes of words like obscenity, profanity, and gross libels upon individuals because the very utterance of such words is considered to inflict a present injury upon listeners, readers or those defamed...[7] (Emphasis supplied.)

A long series of Supreme Court cases, controversial though they are, has decided that libellous, slanderous and obscene words, whether uttered or written, are in a category which is subject to regulation. Such regulation as might have occurred on the State or local level is therefore deemed to be not inconsistent with the First Amendment.

11. One of the frequently cited decisions involved the regulation of speech by a municipal ordinance in Rochester, New Hampshire. The ordinance was upheld in the following significant words by a most liberal Justice (Murphy) who tried to illuminate the relationship between insult and free speech:

> There are certain well defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problems. These include the lewd and obscene, the profane, the libellous, and the insulting or 'fighting' words--those which by their very utterance inflict injury or tend to incite to an immediate breach of the peace.[8] (Emphasis supplied)

12. Another case dealing with an ordinance by the City of New York is of particular interest here because the plaintiff was known habitually to attack minority groups such as Catholics and Jews. It is true that the case involved speech in a public place and that we quote the opinion of a dissenting Justice who was alone in referring explicitly to the above-mentioned New Hampshire case. But two years before, Justice Jackson had participated in the Nuremberg trial of Nazi leaders, an experience which had sensitized him to the consequences of group defamation:

> These terse epithets come down to our generation weighted with hatreds accumulated through centuries of bloodshed. They are recognized words of art in the profession of defamation. They are not the kind of insult that men bandy and laugh off when the spirits are high and the flagons are low...They are always, and in every context, insults which do not spring from reason and can be answered by none...We should weigh the value of insulting speech against its potentiality for harm. Is the Court when declaring Kunz has the right he asserts, serving the great end for which the First Amendment stands?...
> If any two subjects are intrinsically incendiary and divisive, they are race and religion. Racial fears and hatreds have been at the root of the most terrible riots and have disgraced American civilization...[9]

13. Admittedly, in style and approach, Mr. Shockley's paper appears to be in a different category from the "fighting word" of street-corner rabble rousers. But our understanding is that the contents of his lecture satisfied the classical test of the existence of slander: "Did the words tend to lower the plaintiff in the estimation of right-thinking members of society?"[10] Did they tend "to prejudice another in his reputation, office, trade, business and means of livelihood?"[11]

14. The fact that Mr. Shockley's speech did not just slander one or several individuals but an entire racial group is not only of factual but also of legal significance. In a long and justly famed article, published during the Second World War, David Riesman (then still a Professor of Law) documented the role which the defamation of groups has played in perverting the democratic way of life. He remarked:

> defamation and the law of defamation have become weapons in the political struggle between democracy and fascism...The role assigned to individual honor in a community's scheme of values, the character of groups whose reputation is safeguarded, and the type of protective measures taken are important indications of the community's cultural level and democratic quality... Defamatory attacks on groups are attacks both on the pluralistic forces which make up a democratic society and derivatively on the individual members whose status derives from their group affiliations.[12] (Emphasis supplied.)

15. Professor Riesman's warning and proposals have found their way into judicial decisions. A well known case which involved hate-tirades against black people by a white supremacist is Beauharnais vs. Illinois. After a careful review of Illinois history of racial violence the Court concluded:

> We are precluded from saying that speech concededly punishable when immediately directed at individuals cannot be outlawed if directed at groups with whose position and esteem in society the affiliated individual may be inextricably involved.[13]

When such speech is outlawed it is no longer protected as "free speech". Justice Douglas, although he dissented from the majority opinion in this case, still acknowledged that group libel was a serious matter:

> Hitler and the Nazis showed how evil a conspiracy could be which was aimed at destroying a race by exposing it to contempt, derision and obloquy. I would be willing to concede that such conduct directed at a race or group in this country could be made an indictable offense. For such a project would be more than the exercise of free speech. (Emphasis supplied.)

16. Since the experience with Nazism, Jewish groups have been extremely sensitive to defamation and have been alert to combat it at every turn. The Anti-Defamation League is a major Jewish organization whose periodic reports alert a wide public against all attacks whether scurrilous or "scientific". Until recently the black race, even at the height of sensitivity to its rights, has seldom reacted publicly against defamation. A thoroughly informed writer on the question has suggested that this difference might only show how much deeper than the Jewish reaction to anti-semitism the black grievance really is.[14] The defendants in this case have shown that black people now feel the time has come actively to reject defamation.

17. The Committee also considered the question whether Mr. Shockley's speech constituted a "clear and present danger" in the Holmesian context which would also deny it the protection of the First Amendment. After some deliberation we have chosen not to apply this test in the case before us. Indeed, in spite of their indignation about the provocative nature of Mr. Shockley's speech, the students were resolved not to let themselves be moved by it to take any kind of violent action. No immediate breach of the peace was apprehended by any authority, and for this very

reason, that is, because of the rational behaviour of the black audience, Mr. Shockley's thesis did not constitute a clear and present danger. However, that it did constitute a potential danger to the welfare of the defendants and of the race to which they belong is, we contend, beyond dispute.

18. It has been said correctly that, unlike other troublesome speech, libellous speech does not necessarily advocate or incite. Its words are not "triggers of action"; rather, its evils are slow and corrosive.[15] In a similar vein a Columbia Law Review "Note" proposing in 1947 a group-libel statute commented:

> The most dangerous libel is defamatory propaganda that does not necessarily incite to immediate breaches of the peace, but nevertheless is mendacious, threatens minority groups, and endangers ultimately democratic society itself.[16]

And in the already quoted Beauharnais decision, Justice Frankfurter concluded:

> Libellous utterances not being within the area of constitutionally protected speech, it is unnecessary either for us or the State courts, to consider the issues behind the phrase 'clear and present danger'.

We agree with Justice Frankfurter and other deliberate jurists that the "danger test" has its own dangers for the survival of the First Amendment. In our opinion American blacks have reason enough to rally to the defense of the First Amendment because of what it has meant for the defense of their rights. But libel and slander are not free speech.

19. We have asked ourselves and have discussed with the defendants the question whether they, having now taken positive action against racist defamation, would not be tempted to strike out against the written word, books stored in the library and exhibited in the bookstore, or against utterances in the classroom. We are satisfied that the Shockley case is easily distinguished from such expressions. His was a public speech, open to all, even though it was not being delivered on a street corner. Not only did the Academy fail to close to the public the meeting at which the speech was to be given, but Mr. Shockley and the editor of a widely circulated newspaper gave advance notice of the speech and its contents through elaborate news stories and editorial comment.[17] This alone, together with other author-originated publicity, gave to the speech a distinctly political character and underscored its defamatory nature.

20. The New York Times in its editorial "Free Universities--or Captive" accused the students of having brought "pressures to politicize the universities."[18] The facts as reported herein suggest that "politicization" originated with Mr. Shockley. We are not so naive as to suppose that politics can be kept from a university campus. But when a political and public speech uses the weapons of group defamation then, as Professor Riesman and other writers remind us, not only the group attacked but the foundations of the whole university community are threatened.

III. The Parties Involved

(a) The Speaker: Mr. William Shockley

21. The Committee gave due consideration to the motives and behavior of the parties involved in the incident. In respect of the speaker, Mr. Shockley, the Committee had before it the following documents:

(1) the abstract which Mr. Shockley circulated before the October 15 meeting of the National Academy of Science.

(2) the press release distributed at the meeting.

(3) correspondence between Mr. Shockley and various members of Congress.

(4) correspondence between Mr. Shockley and the National Academy of Science.

(5) letters written by Mr. Phillip Handler, President of the National Academy of Science about Mr. Shockley's theories.

(6) other correspondence by and about Mr. Shockley's activities.

(7) newspaper coverage of the Shockley incident at Dartmouth.

22. Mr. Shockley's position, as expressed in the November 2, 1969 issue of the Boston Globe, is that "an objective examination of relevant data leads me inescapably to the opinion that the major deficit in Negro intellectual performance must be primarily of hereditary origin". The academic validity of Mr. Shockley's investigations has been repudiated by the National Academy of Science in clear terms. His work in the area of genetics, which is not his speciality, is regarded by highly respected scientists as mere

charlatanry. The Academy's publication, News Report, made the following statement:

> There is no scientific basis for a statement that there are or that there are not substantial hereditary differences in intelligence between Negro and white populations. In the absence of some now-unforeseen way of equalizing all aspects of the environment, answers to this question can hardly be more than reasonable guesses...(There) is the conviction that none of the current methods can produce unambiguous results. To shy away from seeking the truth is one thing; to refrain from collecting still more data that would be of uncertain meaning but would invite misuse is another.[21]

23. The President of the Academy in a letter dated October 15, 1969 to Mr. W. H. Stockmayer of Dartmouth College said in part: "Since Dr. Shockley has offered no new research program and no new approach to psychometric measurements, while confusing available data with views concerning the management of welfare programs, the National Academy of Science does not endorse his recommendations" to sponsor further research in this area.

24. An important question arises at this point. If, as appears to be the case, Mr. Shockley's work cannot be considered academic or scholarly, within what framework can an enlightened debate on his work take place on a college campus which would further the educational goals of the institution?

25. This Committee also enquired whether Mr. Shockley's intent was a scholarly or a political one. The paper which Mr. Shockley handed to Mr. Stockmayer, Chairman of the October 15 meeting, in lieu of his oral presentation was written in the form of a press release. This in itself may not be unusual, and we have no data about attempts by other members of the Academy to publicize their

papers. However, in the context of Mr. Shockley's other activities, it is evident that his interests go far beyond scholarship. Mr. Stockmayer, in testimony before the Black Judiciary Committee, speculated that the October 10, 1969 editorial in the Manchester Union Leader (which we judge to be sensational if not inflammatory) was perhaps the result of contact between Mr. Shockley and the Union Leader. To Mr. Stockmayer's knowledge no one in the Academy or at Dartmouth had revealed the fact that Mr. Shockley would be speaking here.

26. Mr. Shockley has attempted to use political pressure to secure a forum for his ideas and to seek retribution against those who disagree with him. He has written to a number of Congressmen to ask them to put pressure on the National Academy of Science to adopt his resolution for Academy sponsorship of further research into genetic causes of racial differences. On June 22, 1969, he wrote to Senator Everet Dirkson, asking the Senator to oppose the nomination of Dr. William McElroy as Director of the National Science Foundation. Mr. Shockley's reason was as follows: "My opposition is based on his views on hereditary factors in our national human-quality programs and... of his expressed unwillingness to be open with the press and the public on such controversial matters."

27. In the light of these disclosures and other evidence we find Mr. Shockley's activities indicate an approach to scientific inquiry that betrays a strong political motivation. He seeks to gather political support for these activities which, on the one hand, are

considered to be scientifically untenable and, on the other, are demonstrably harmful not only to the black race but to society as a whole.

28. Black students at Dartmouth are not alone in alerting us to the danger of Mr. Shockley's work. On September 2, 1969, Mr. Phillip Handler, President of the Academy, said in reply to Senator Robert P. Griffin:

> I will have more confidence in the outcome of these studies if those who conduct and report them will confine their interpretations to a rigorous analysis of the data and its meaning in a genetic and psychological sense, and refrain from recommendations with respect to the utilization of those data by the executive and legislative branches of local, state or federal government.

And in another letter dated July 24, 1969 to a Mr. Winfield Heckert (who had written to Senator John J. Williams in Mr. Shockley's behalf) Mr. Handler explained that, in turning down Mr. Shockley's request for support of his investigations, members of the Academy were concerned that:

> the data emerging from such studies might be deliberately misconstrued or might be utilized in such fashion as not to serve the national interest.

Mr. Handler continued:

> It is in the national interest to assure that each citizen, whatever his initial circumstances, be so educated as to contribute maximally from his own potential to the common cause.

29. Despite repudiation by the Academy and by individual scientists, there is evidence that Mr. Shockley's theories are accepted in several quarters. On May 24, 1969, the Tulsa Tribune in an article supporting Mr. Shockley commented:

> There is no kindness in perpetuating delusion, however kindly it is meant. The mother who is told that her dull child may become bright if it is bussed across town could be a victim of a cruel fraud. The professors who seem masochistically eager to see their colleges deluged with unprepared students from the ghettos may by promoting disappointment.
>
> Those professors have traditionally demanded higher and higher entrance standards. Now, if they are sure that the very environment of college will automatically prepare for the disciplines of college work ill-prepared black newcomers, then they are guilty of discrimination against generations of ill-prepared white students whom they cheerfully kept out. And if the new ghetto students stare blankly at the blackboard, explode in frustration and burn Old Main whose fault is it?

Such a line of reasoning could be interpreted as a direct threat to black students who have recently been admitted to Dartmouth College.

30. Dr. Benjamin Pasamanick in his letter to the New York Times is also aware of the danger of Mr. Shockley's views. He stated:

> Studies have demonstrated that teachers' expectations and opinions regarding their pupils have large and significant effects upon the learning and school performance of these children in the direction of these expectations. What neither The Times nor like-minded academicians have considered is the fact that when talks such as Dr. Shockley's are dignified by presentation at reputable universities they reinforce the thinking and behavior of latently or overtly prejudiced teachers. One would then anticipate the very inferiority Dr. Shockley insists is inherent in Negro children. [19]

Mr. Shockley criticizes welfare programs in the light of his "findings". He advocates eugenic approaches, such as artificial insemination, which are anathema to members of minority groups who remember Nazi Germany. It is clear that the desire of black students to protect themselves from Mr. Shockley was not grounded in fantasy.

31. In view of the questionable scholarship of his work, the strange admixture of politics and scholarship, and the racist overtones in his suggestions for public policy Mr. Shockley, in the opinion of this Committee, has created for himself a unique situation where it is difficult to apply the normal rules and guidelines for academic debate and scholarly inquiry. His appeals to mass audiences and wide publicity certainly put him in a category different from that of the classroom teacher who wishes to present to his students a number of ideas from which they must build their own synthesis. His lack of expertise in his new field and his questionable scholarship also remove him from the realm of meaningful intellectual exchange within a community of scholars.

32. An individual who is in disrepute among most of his own colleagues, who attempts to get political mileage from university appearances, and whose words have a potential and demonstrable harmful effect on an entire race of people should not, in our judgment, be welcomed by the academic community. We agree with the letter to the New York Times of October 21, 1969, written by David Layzer, which said: "In a time when academic freedom is threatened from so many quarters, the exercise of academic responsibility is one of its essential safeguards."

(b) The Sponsors: The National Academy of Science and Dartmouth College.

33. According to the local chairman, Mr. W. H. Stockmayer, the National Academy of Science purposely scheduled Mr. Shockley's

talk at the end of its meeting when it was hoped that most of its members would have left Hanover. This expectation was fulfilled. But while thus protecting itself and its members from the opprobrium of Mr. Shockley's address, the Academy at the same time did not see fit to schedule the speech to a closed meeting which we understand was possible under the bylaws of the Academy. Thus the Academy directly assisted Mr. Shockley in reaching a much wider audience, guaranteed by his advance publicity, under the guise of presenting a scientific treatise in an academic setting.

34. Academy officials were aware of the provocative nature of Mr. Shockley's theories. They were aware too of a growing opposition by students to the proposed speech. But they shied away from taking an effective measure, by means of a closed meeting, to deny Mr. Shockley the public audience he obviously sought. They hoped, apparently, that the right of free discourse observed in an academic community would absolve them of the responsibility to deal with one of their members who was clearly using the auspices of the Academy to propagate dangerous pseudo-scientific and politically oriented sentiments.

35. The Black Judiciary Committee considers the action of the Academy to be both timid and irresponsible. While decrying the validity of Mr. Shockley's theories and acknowledging his lack of expertise in the area of genetics, the Academy nevertheless collaborated in giving him a public platform to disseminate theories

which threaten the welfare of the black community at Dartmouth and black people everywhere. It is not for this Committee to question the rules of the Academy which permit any member to present a paper at their national conference. We do however question the propriety of a prestigious national organization continuing to help Mr. Shockley spread his gospel of black inferiority (and by inference white superiority) under the mask of presenting a "scientific treatise".

36. We turn now to the involvement of Dartmouth College. By October 14, 1969 at least both the administration of the College and the greater college community knew of Mr. Shockley's presence on campus and the nature of his planned presentation. This information was available through the Manchester Union Leader, the Dartmouth Review, the Dartmouth, the Academy agenda, and the pamphlet issued by two members of the Students for a Democratic Society. College officials realized that the situation was potentially explosive. One official, Dean Shafer, attempted to secure information from certain black students with whom he thought he had some rapport. He was not successful. He then decided to address a group of black students who were discussing the Shockley situation to persuade them to abandon any protest action. However, he changed his mind and turned back. Other College officials sought from various sources to obtain advance intelligence of any planned protest demonstration. The information they received led to the belief that no protest action was likely.

37. It has been argued that black students should have apprised the College of their resentment to the appearance of Mr. Shockley on campus and their determination as a last resort to take measures to prevent his speech. The fact that the students not only failed to notify the College of their protest but rather made clandestine plans testifies that in certain matters there is a lack of confidence by black students in the moral sensitivity of the College administration to understand the nature of black resentment.

38. The actions of the College officials previous to and on the morning of the proposed lecture tend to corroborate the black students' contention that the College would have opposed any request for a cancellation of Mr. Shockley's lecture. Several faculty members had prepared rebuttals to Mr. Shockley and therefore were anxious to hear him in order to repudiate his theories. The fact that the paper which Mr. Shockley gave to Mr. Stockmayer was substantially different from the abstract circulated before the meeting suggests that these scholars might have been caught unawares by the speech Mr. Shockley intended to deliver. Moreover it has been reported by others who have heard Mr. Shockley speak that his questionable scientific methodology precludes any meaningful intellectual debate, and Justice Jackson has reminded us that there are certain insults which do not spring from reason and can be answered by none. The Committee is of the opinion that no satisfactory rebuttal to Mr. Shockley by members of the Dartmouth faculty or others was possible since it could not undo the potential damage of his delivered speech.

39. At the start of the incident a letter from the President of the Academy was read dissociating the Academy from Mr. Shockley's views. This statement did nothing to assuage, in the minds of black students, the pain and abuse to which they believed they would be subjected by Mr. Shockley's address. Rather it served to confirm them in their determination not to allow the speech. The College was represented by many members of faculty, administration and staff at the lecture. But the College, hosts to the Academy and therefore to Mr. Shockley, did not see fit itself to take a stand in the matter.

40. It is understandable that black students felt they had to rely on their own resources to prevent a demaging attack on themselves and their race. They began clapping whereupon College officials present immediately lined themselves up both physically and rhetorically with Mr. Shockley and tried by various arguments to get the students to desist. They were not successful. At no stage before or during the incident did any member of the College administration consider the advisability of cancelling Mr. Shockley's speech (or of persuading the Academy to do so) as long as Mr. Shockley himself was not in physical danger. The danger to black people by his defamatory remarks was never considered reason enough to merit cancellation.

41. We are conscious that Dartmouth College has given priority to its equal opportunity program under which an increasingly high percentage of black students are recruited and prepared for College admission. The fact that a College committed to the principle of

equality could find itself unwittingly aligned with a contradictory doctrine speaks of the wide gulf that has still to be bridged between public policy and private sensitivity in the matter of race relations.

(c) The Students.

42. The Committee is persuaded that by preventing Mr. Shockley from delivering his address, black students acted in self-defense. The Law Dictionary definition of that term describes legitimate self-defense as any act designed to protect one's person or property against some injury attempted by another if there is no convenient or reasonable mode of escape from the impending peril. We have shown the probable injuries to the defendants and to their race from utterances such as Mr. Shockley's. The circumstances surrounding the incident as described elsewhere in this report make it clear that the students concluded correctly that only by their own action could the speaker be silenced.

43. This does not imply that no other course of action was possible. Justice Frankfurter once stated:

> It is not a constitutional principle that, in acting to preserve order, the police must proceed against the crowd whatever its size and temper and not against the speaker.[20]

In this instance, the defendants realized that no such action was taken or even envisaged. Mr. Stockmayer described to us that he and other Academy officials, all guests of the College, felt "helpless". By resorting to self-help the students had recourse to an institution as old as law and which is upheld by law. Undertaken by black students at this moment in history, self-help has particular significance.

In almost every part of the country black protest has moved from the courts into the streets, the lunch counters, the bus terminals. It has indeed become a massive self-help movement.

44. The Black Judiciary Committee has no wish to idealize a local incident out of proportion to its significance. We therefore refer again to the lectures of Harry Kalven:

> This phenomenon (self-help) is rich in significance. Indeed it may prove to work better for the Negro, and for the country, than all the 'deliberate speed' of the courts. It has given the Negro a sense of pride of hope and of vitality. It has accelerated remarkably the development of Negro leadership. It has the muscle tone of revolution. Yet thus far it has been executed with an astonishing sense of tack and legality.[21]

All observers of the Shockley incident, and especially the College Proctor, testified that "tact and legality", the complete absence of any inclination to commit a breach of peace or violence, characterized the behavior of the students. It is not far-fetched to see in their behavior an analogy to the orderly sit-ins legalized by the Supreme Court in the leading decision, Garner vs. Louisiana.[22] That case discussed black self-help tactics and the extent to which they can be regarded as a new form of free speech entitled to certain privileges.

45. Looked at under the classical perspective of property laws the sit-ins appear as a form of unlawful trespass. The courts nonetheless have decided that under present circumstances orderly sit-ins are lawful demonstrations. Even if one wanted to consider Mr. Shockley's intended address as an exercise in free speech--which as we have shown it was not--an interference with

it by an orderly clap-in was no more unlawful than the activities legitimized by the Supreme Court in the Garner and other cases.

46. The argument has been voiced that by preventing Mr. Shockley from delivering his lecture, the students gave him much greater publicity than he would otherwise have had and thus helped to spread the very sentiments their action sought to suppress. We put this question to the defendants. Their reply, which we quote below, would appear to justify the validity of their action:

> In silencing Mr. Shockley the brothers intended dramatically to bring to the attention of black people in this country the danger that threatens them if speeches, such as Mr. Shockley's, are allowed to be given. A speech dealing with the slander of a racial group is not susceptible to academic discourse because verbal refutation cannot undo the damage caused by the utterance of this slander.

IV. The Guidelines

47. The students are charged with violating the College "guidelines" on Freedom of Expression and Dissent. These guidelines explicitly legalize protest demonstrations "so long as the orderly processes of the College are not deliberately obstructed". The position of the defendants is that they have in no way violated either the wording or the spirit of the guidelines and the Committee is inclined to this view.

48. The testimony we have heard agreed that during the incident there was a remarkable absence of anything resembling force or violence. We were particularly impressed by the Proctor's statement that he did not "sense" any such threat as being in the air since Mr. O'Connor certainly has a wide experience in this field.

49. What is meant by the phrase "orderly processes of the College" is a controversial matter. From our previous detailed discussion it is clear that the conditions under which Mr. Shockley was to present his paper were, to say the least, very unusual. We are unwilling to admit that the College could prove its "orderly processes" cover the presentation of such a paper under the auspices of the Academy. In any event, at no time during the incident did any official of the College apprise the students of a possible violation of the Guidelines. When these officials addressed the students they spoke merely of the general principles of academic freedom and of free speech. We would assume, therefore, and here we would agree with the College authorities, that initially they wished to see the incident judged in broader terms than the mere application of local rules still undergoing a much-needed process of clarification.

50. It is indeed also true that the opening sentences of the Guidelines, as printed in the Student Handbook, speak in general terms about the principles of which the Guidelines are merely a local instance. For this reason we believe that having demonstrated that the students did not violate any constitutionally protected freedom, we have also proved that they did not violate the Guidelines.

V. Conclusion

51. The Shockley incident has raised fundamental issues governing Constitutional principles on which the Republic was founded. National publicity of the incident has turned the eyes of the nation on Dartmouth and it is not too much to say that the country now awaits our judgment. The Black Judiciary Committee, cognizant of the far-reaching implications of the case, was constrained to view the issues primarily in a legal context which would be applicable anywhere in the nation. But we are not a court of law; nor do we feel that the university is a place where appeal to the law on internal problems should be considered the sole standard for judgment.

52. From the foregoing it must be apparent that we do not recommend any College penalty against the seventeen black men for their behavior during the October 15 meeting of the Academy. We would reiterate that the defendants saw in Mr. Shockley's speech an attack on their future security, that we are convinced of the reasonableness of that fear, and that the principle of "equal opportunity" to which Dartmouth College is committed strives above all to safeguard that security which has been for so long withheld from the black race.

53. Having concluded that the charge against the students should be dismissed we wish to express our deep concern about the situation that has arisen. We feel impelled to issue a "Warning" -- a warning to all members of the college community, white and black, that future conflicts concerning the ground rules under

which this College operates are bound to arise unless there is a clear understanding of the rules, both substantive and procedural.

54. In the present case there is fortunately no controversy regarding the facts. But we know only too well that our findings will be controversial. We cannot be sure that all members of the community will agree with our interpretation concerning what kind of speech is "privileged" and should therefore not be interfered with. Similarly the Dean of the College who deplored that "an opportunity to expose bad thinking" was lost, must understand that this was not the issue. Faculty members and College officials who, according to the Dartmouth Alumni Magazine, warned the protesters that they were "not only threatening a cardinal principle on which the freedoms they seek are based, but were setting a precedent which could be turned against them" [26] must view the incident in a different light.

55. The Black Judiciary Committee does not claim to possess a monopoly of truth in a highly complicated and controversial matter. We are convinced there is no other way constructively to resolve the conflict that has arisen except by first explaining to the community why College sanctions against the defendants are not in order. Once that is done, we must immediately engage in the difficult process of clarifying the rules governing campus

behavior. Adherence to those rules will be secured when all constituents are convinced of their soundness and of the determination of the College to apply them with equal justice to all.

Larry Barr
Robert Carter
Henry Ehrmann
Isaac Heard
Errol Hill
Robert McGuire
Jonathan Mirsky
Larry Stephans, Chairman

References

1. Cited in "Monthly Record of Events", Harper's Magazine XXXIV (1867), 398.

2. Constitution of the United States, Article I, Section 2, Clause 3.

3. Supreme Court of the United States, 19 How. (60 U.S.) 393 (1857).

4. Blaustein & Zangrando, Civil Rights and the American Negro (New York 1968) p. 217.

5. Time Magazine, September 29, 1967.

6. This fear was voiced by Dean Leonard Rieser according to an article in the Dartmouth Alumni Magazine, November 1969, p. 21, and entitled "Free Speech at Issue".

7. Zechariah Chafee, Jr. Free Speech in the United States (1942), p. 149.

8. Chaplinsky vs. New Hampshire, 315 U. S. 568, 571-2 (1942).

9. Kunz vs. New York, 340 U. S. 290, (1951).

10. Here quoted from George P. Rice, Jr. Law for the Public Speaker (1958), p. 114. The entire Chapter VII entitled, "Defamation by Slander", is useful for the present discussion.

11. These words lifted from Black's Law Dictionary parallel closely the statements of the defendants quoted in paragraph 8.

12. "Democracy and Defamation: Control of Group Libel", 42 Columbia Law Review, pp. 727-780 (1942). Other equally important installments of the article are to be found ibid., pp. 1084-1123 and 1281-1318.

13. Beauharnais vs. Illinois, 343 U. S. 250 (1952).

14. Harry Kalven, Jr. The Negro and the First Amendment (1965) p. 11. The entire book, consisting of lectures originally given at the Ohio State Law Forum warrants close study by all those concerned.

15. Ibid. p. 14.

16. 47 Columbia Law Review, p. 595 (1947).

17. Manchester Union Leader, October 14, 1969.

18. New York Times, October 14, 1969.

19. Reprinted in the Daily Dartmouth, October 27, 1969.

20. Niemotko vs. Maryland 340 U. S. 268, 290 (1951).

21. Op. cit. p. 214.

22. 368 U. S. 157 (1961).

The College Committee on Standing and Conduct (CCSC) has placed seventeen Dartmouth undergraduates on College Discipline for one term, without restrictions, as a consequence of their participation on October 15, 1969, in a hand-clapping demonstration which prevented Dr. William Shockley of Stanford University from delivering a speech at the concluding session of the annual meeting of the National Academy of Science held here by invitation of the College.

The seventeen students were charged by the College Proctor on October 21, 1969, with violation of the College regulation on Freedom of Expression and Dissent, and each chose to have his case heard initially by the Judicial Advisory Committee for Black Students (JAC), pursuant to Rule III-C of the Academic Requirements and Conduct Regulations of the College: "Any black student, regular or special, may request this advisory committee to investigate his case and to furnish a report of findings and facts and a recommendation to the CCSC." The cases were referred to the JAC on October 23, 1969. The report of the JAC was delivered to the office of the Dean of the College on Wednesday, November 26, 1969, by a member of the JAC. The JAC report concluded that the hand-clapping demonstration did not constitute a violation of the College regulation on Freedom of Expression and Dissent, and it recommended that no College penalty be given. Each member of the CCSC subsequently received from the Dean of the College a copy of the JAC report. Each student charged received an invitation to appear before the CCSC; none chose to appear.

After careful study of the report, members of the CCSC engaged in lengthy debate as to whether or not the students charged had violated the College regulation. The report of the JAC is a serious one and has been taken seriously. It would be improper and unfair for the CCSC to try here to summarize its reasoning and its findings, or to present selective quotations for purposes of argument. Readers are referred to the JAC document itself, which is attached to this statement.

The CCSC found that the annual meeting of the National Academy of Science, invited here by the College as part of the Bicentennial Celebration, was an orderly process of the College within the meaning of the College regulation on Freedom of Expression and Dissent and that by the clapping demonstration the seventeen students obstructed the right of freedom of speech. Therefore, the College Committee on Standing and Conduct has found the students guilty of violating this regulation. Were it not for the extenuating circumstances, some of which were expressed in the report of the JAC, the penalty would have been more severe. We believe this penalty lends testimony both to the circumstances of mitigation and to the importance of the principle that: "The exercise of these rights [freedom of expression and dissent] must not deny the same rights to any other individual."

THE COLLEGE COMMITTEE ON STANDING AND CONDUCT
December 4, 1969