

From: Subcommittee on Procedures

Subject: Investigation of the FBI Affair

Recommendations:

- 1) That there be one and possibly two meetings with each of the most implicated individuals: Feiy; Piersol; Webb
  - a) the first meeting should be informal, off the record, and without any subsequent consequences for the individuals.
  - b) if a second meeting--a hearing--is thought desirable, it should be de novo; it should not involve use of any information gathered in the first meeting; and it should be conducted by different individuals from those participating the the first discussion.

Discussion:

The major difficulty at present is the absence of relevant or competent evidence of wrongdoing specifically related to the FBI activities.

Such evidence as we have presently is "hearsay." The fact that the evidence is in the form of documents does not change its character as "hearsay." The FBI says ~~some~~ <sup>of unknown persons</sup> (with <sup>scrawled comments</sup>) that individuals were "sources", or made particular information available. There is not (and since the FBI will not cooperate) cannot be any direct testimony. The FBI mandate to local agents to send in lists of sources (see Phoenix, April 23) suggests also that the term "source" might have been interpreted broadly and loosely. The facts in this case, so far as they are known, are disconnected and without context, subject to a variety of interpretation. Furthermore, there seems to be little specific evidence of wrongdoing. Webb's acts--at least as reported in the Phoenix--would seem to be within her rights as a concerned citizen. The possible exception is her handling of transcripts, but so far nothing appears to indicate any serious abuse of discretion or improper disclosure. Feiy's case may

be more serious. But so far as information gotten from the FBI goes, the wrongful act is not specified in the documents and is not even known--if, indeed, there is such an act. Other complaints about eavesdropping are irrelevant and not material to the present situation. With respect to Piersol, there seems to be no evidence other than a description of him as a "source." There is not even an allegation of any act.

A second major difficulty is that of providing due process protections to the parties implicated. Absent FBI cooperation or a right to compulsory process, there is no way for these parties to cross-examine FBI agents and therefore no way for them to establish the truth with respect to the documents. They cannot prove their innocence--in fact, they are foreclosed from doing so. Under these circumstances, a hearing would lack in some measure either fairness or conclusiveness.

At present, more extensive and accurate information would seem to be the most important need. Yet it would also seem unfair to ask the involved parties to disclose their activities fully and candidly where 1) they have no right to subpoena or cross-examine; and 2) where such disclosure might be the ground for censure, disciplinary action, transfer, or dismissal.

With the above considerations in mind, we propose, therefore, a two-step procedure with the first step to be an informal, off-the-record discussion, as a preliminary to which the parties are to be told explicitly that no consequences to them would result from this particular discussion. This group could recommend further action but with that would cease to exist and would be bound not to make its information available as evidence in any second proceeding.

As to procedure in the first discussion, we believe that it should be kept as informal as possible. Notes pertinent to future recommendations could be taken, but no transcript or "minutes" would be kept. The committee should function as a group, without a chairman functioning as a "prosecutor" or "interrogator" in

any fashion. The individuals concerned could have counsel, but should not be encouraged to do so, inasmuch as no record will be kept or used and informality is essential. The group should probably have a number of questions prepared in advance, but not as part of a set agenda or specification of "charges". At the first stage of proceedings, emphasis should be upon 1) giving individuals an opportunity to explain and/or deny the implications of the FBI documents; 2) give their views as to what they would regard as permissible and impermissible disclosure to or cooperation with the FBI as college employees; 3) what, if anything, the College should do to specify or in any way restrict or expand the scope of their discretion.

3) what formal regulations and informal understandings they see as controlling their activities in these matters;