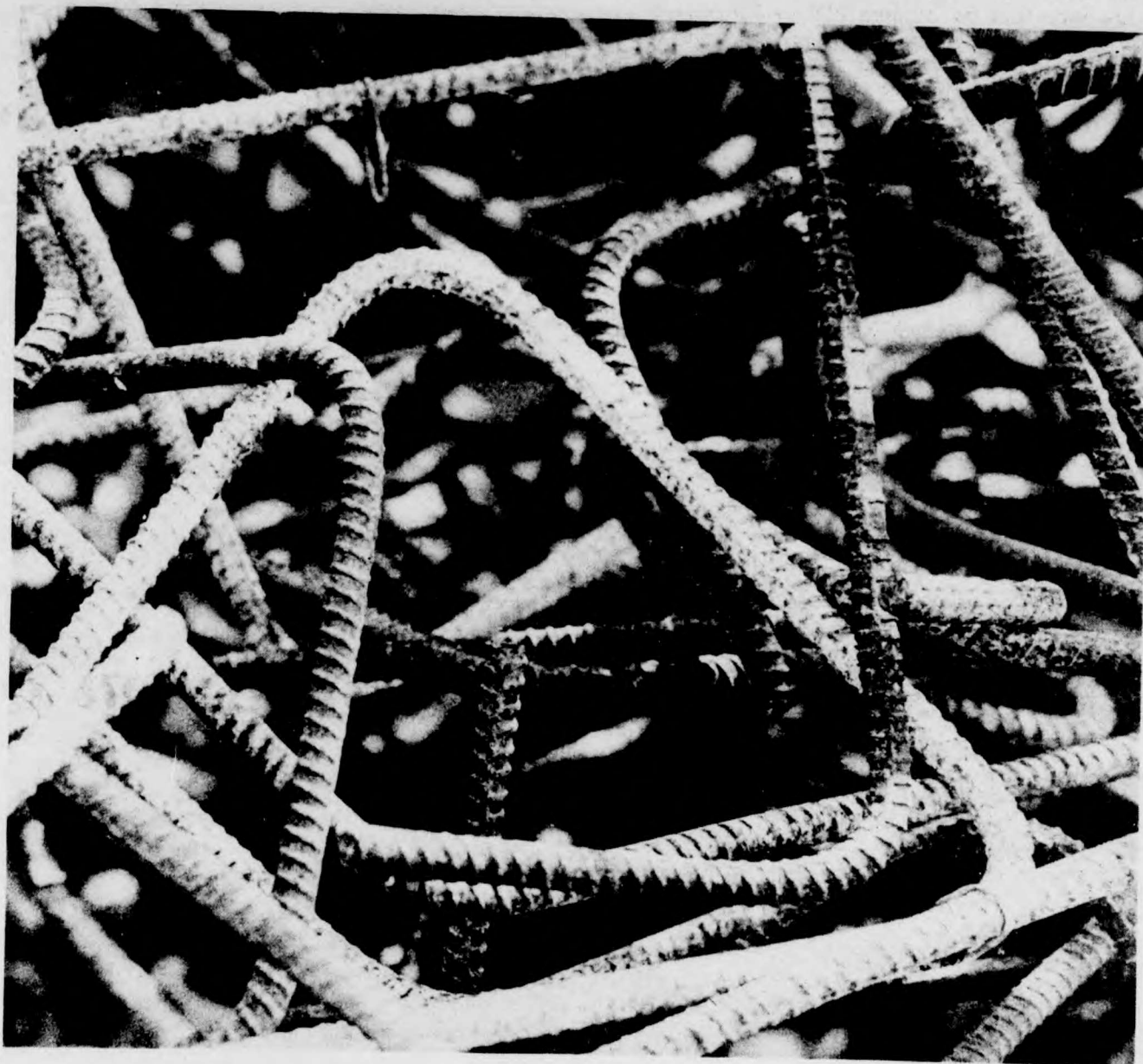


authorities may decide to bring before their respective courts. Their particular interests may be concurrently engaged to a degree which would make their failure to act a dereliction of administrative responsibility.

The Committee thinks it proper to do no more here than to recommend: (1) that the University administration be sensitive to the possibility that excessive punishment may result if sanctions are concurrently imposed both by the University and by the public courts; and (2) that it may consider it enough to establish a violation of University norms of behaviour so as to bring home to the offender that his violation has become a matter of record even if only a minor sanction is imposed or sought from the university court.

The Committee has two further recommendations respecting the operation of the court system. Hearings both at trial and on appeal should be open, subject to the discretion of the court, after considering representations to that effect, to hold the hearings *in camera*. The court should also be charged with the responsibility of deciding whether the evidence at trial should be taken down verbatim and a transcript provided, and whether there should be a transcript of the oral argument on an appeal. Presumably, where questions of fact crucial to the issues appear to be in dispute, the evidence would be taken down in full for purposes of study by the trial court and for the assistance of the appellate court if an appeal is taken. Where a verbatim record and transcription of the proceedings are directed, the cost should be borne by the University.

The Committee recommends, although this may be obvious, that the records of the courts and of the proceedings before them should be preserved and should be kept separate from other University records. It also recommends that anything in the records of the courts pertaining to any student or faculty member, whether as to offences and discipline or otherwise, should in no circumstances be noted on his academic transcript or record.



Excalibur -- Tim Clark

12. Rules and sanctions: the law of the university court system

The proposed university court system cannot operate in a vacuum. There are various models which can be considered with regard to the functioning of the proposed courts: (1) standards of conduct might be formulated as guides for the courts; (2) a code of regulations might be drawn up which the courts would be expected to apply; (3) the courts might be left to develop their own "common law" of the University; or, (4) there could be a blending of a body of standards and of rules with the courts' creative role to complement or supplement the given standards and rules. This Committee leans to the last of these proposals for reasons that follow.

Hitherto, the University has not had any comprehensive regulations respecting norms of behaviour of faculty members or students. Moreover, it was, by and large, assumed that all members of the University community would know without being told that they were subject to the ordinary laws, whether municipal, provincial or federal. The Committee sees no pressing need to have this expressed in any document but it may be prudent to be obvious about this so far as concerns conduct on the campus as well as off it.

University calendars or handbooks have dealt only in very general terms with prescribed conduct, and then in respect of students alone. The following passages are current:

Student Conduct

Upon accepting admittance and registering at York University, a student acknowledges his willingness to abide by the rules and regulations of the University.

Within each College, the Master or Principal is responsible for the conduct and activities of the students in his College. Detailed regulations pertaining to student conduct are issued by the various Colleges. Other university regulations are recommended by the York University Committee, made up of eight students and seven faculty members.

Bars are not permitted at undergraduate functions held on campus. The sale, distribution, possession or use of any illegal narcotic and of LSD is prohibited at York University.

The University retains the right to take appropriate disciplinary action against any student whose conduct is considered detrimental to the good name of the University.

This prescription, in the Committee's view, is completely unsatisfactory. There is no specification of University-wide rules and regulations, nor any indication where they may be found; at the most, there is a forewarning that regulations may be issued. The mention of liquor and drugs alone seems somewhat gratuitous. There is, finally, undue vagueness in the references to "appropriate disciplinary action" and to "conduct ... considered detrimental to the good name of the University." Indeed, the vagueness is compounded by the failure to refer to any procedures or tribunals; and both paternalism and arbitrariness inhere in the formulation. There is, in the Committee's view, an obligation on the University to provide clearer guidance to students on the norms of behaviour, on their relation to the law of the land and on the procedures by which punishable misconduct will be enforced. The inclusion of faculty members in the operation make this all the more necessary.

There are, of course, some recognized academic offences which if committed would not amount to a violation of the criminal law of the land; for example, cheating at examinations; and there are some non-academic offences which similarly are purely University infractions; for example, parking in a prohibited place on the campus (assuming no applicable municipal by-laws) or failing to pay prescribed University parking fines. The Committee does not think that it would serve any useful purpose to seek to legislate too widely and in too great particularity on norms of behaviour beyond enunciating those regulations which have a purely University *raison d'être*, as contrasted with those which, being the law of the land, would apply both on and off the campus. Many

of the recommendations in this Report would come within this specification. For the rest, the Committee is of the view that it is enough to enunciate such general standards as the duty to refrain from destruction of property, from invasion of premises, from violence and from incitement to violence, from assault or threat of assault, from unjustified interference with the conduct of classes or of meetings, from obstruction of passage of others, and from obstruction of ingress to or egress from campus buildings.

With a general statement of these duties of abstinence (which, the Committee believes, are put in better perspective when expressed as the obverse to the rights of free expression and association and assembly in the University), the Committee would leave it to the university courts to fashion particular rules in particular situations by analogy to the prescriptions of the law of the land and by application of the general standards which have been (perhaps not exhaustively) suggested. It is, in the Committee's judgement, unwise to seek to devise a comprehensive and particularized code which would cover every known or anticipated occurrence for which some measure of discipline might be imposed. Human behaviour has infinite variety; and, however detailed the prescription, there would be variations which would involve the courts in issues of interpretation not differing substantially from those to be expected in dealing with the general standards which this Committee recommends.

The Committee gave consideration to the adoption of the very general formulae upon which disciplinary action is based in some of the statutes governing the professions, namely "conduct unbecoming a barrister, solicitor or student-at-law" (as found in the Ontario Law Society Act) or "misconduct in a professional respect or conduct unbecoming a medical practitioner" (as found in the Ontario Medical Act). It concluded that such standards would be too vague to apply to faculty

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