

THE UNIVERSITY OF WISCONSIN
LAW SCHOOL

MADISON, WISCONSIN 53706

May 18, 1972

U. S. Attorney John Olson
United States Courthouse
Madison, Wisconsin 53703

Dear John,

I am responding to your letter of May 16th, addressed to the members of the Law Faculty who had earlier sent you a letter calling for an investigation of police misconduct. I found your letter misleading in parts. I am particularly disturbed that your letter could be interpreted as maligning--wrongfully, I believe--the integrity of myself and my colleagues who joined me in signing our original letter.

Your letter clearly implies that when you and your staff came to the Law School on Monday, you held a reasonable belief that you would be able to obtain the written statements testifying to police misconduct to which we referred in our letter. As you know, when I delivered our jointly signed letter to your office on Friday, I included a covering letter from me personally, in which I stated:

The written statements of policemen's conduct referred to in the letter are, to my knowledge, now in the possession of attorneys representing students charged as a result of the incident on Wednesday. If you have any questions about this matter, please feel free to contact me.

This letter was delivered to Assistant United States Attorney Eric Wahl, who assured me that it would be delivered to you before you left the office for the day. To my knowledge, you made no effort to contact me over the weekend. You did come to my office approximately at 10:00 A.M. on Monday morning, at which time I confirmed to you the whereabouts of the written statements.

When I spoke with you Monday, I assured you that I would ask the defense attorneys to supply you with copies of some or all of the written statements. I contacted Jim Glover, a local attorney, who I understood to have at least most of the statements. He informed me that he was turning the statements over to Messrs. Shellow and Coffey, who by that time were representing most of the law students facing charges brought by your office. I informed you of this fact by telephone conversation on Monday afternoon. I indicated that I would try to pursue the matter further with Messrs. Shellow and Coffey, although I was personally acquainted with neither. I can now report to you that neither of these attorneys is willing at the present time to provide any of the statements to you. As you know, these attorneys have responsibilities to their clients. I, for one, do not purport to question their judgment in this matter.

In view of the circumstances related above, it must have been obvious to you either before you came or shortly after you arrived at the Law School that no member of the Faculty would be able to supply you with the written statements. Yet you continued to ask people for the statements and in your recent letter you still ask that we supply you with the written statements. What you expect, I do not know.

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In some ways the most disturbing allegation in your letter is that: "Those who had read the statements would only provide us with vague and general information about the content of the statements." That allegation clearly implies that those faculty who had read some or all of the statements refused to supply you with all the information they knew. Since I am one who had seen many of the written statements, your allegation applies to me. At least with respect to me, it is untrue.

When I met with you Monday morning, I related to you what I could remember about the statements I had seen. I admit my recollection was in many respects hazy, since it had been 5 days since I read the statements, but I resent any implication that I was deliberately withholding information. In addition, in response to your request, I supplied you with the names of students I could remember as having prepared statements. Finally, I related to you in great detail what I had seen of the confrontation at the Courthouse. You took notes and questioned me on various details. I also promised you that I would endeavor to obtain a copy of my personal written statement that I prepared on the day of the confrontation (which I then did not have) and send it to you. That copy is enclosed.

Your letter also seems to imply that you do not presently have access to any of the written statements. The facts are, as I informed you on Monday and as I am sure you were otherwise aware, that a number of these statements were attached, in affidavit form, to a complaint filed in federal court on Friday afternoon, May 12, 1972. The affidavits are thus public records, available to you in an office in the U.S. Courthouse located on the same floor as your own office. I further point out that although only some of the affidavits filed in that action relate to incidents occurring at the Courthouse on Wednesday, May 10th, other affidavits attest to many incidents of police misconduct occurring in Madison during the recent past. These incidents, if they occurred, may involve interference with a citizen's civil rights by a state official and thus may be federal crimes.

I should also remind you that in our aforementioned telephone conversation of Monday afternoon, May 15th, I suggested to you that rather than trying to obtain copies of the original statements, it would probably be more effective to solicit new statements from law students relating to the incidents at the Courthouse. I indicated that if you would send me a letter indicating you would welcome such statements and indicating a time and place at which they might be made, I would see to it that the letter was publicized in the Law School and I personally would encourage students to cooperate. In this way, we might be able to duplicate the written statements, even if we could not obtain copies of the original statements. To date, you have not accepted this offer.

I think the most important point to make is that the letter I signed with my colleagues did not, as you state, "call for an investigation based on that information (i.e., the statements)." It called on you to insure that the allegations of police misconduct are investigated. Such an investigation should not be limited to these statements but should encompass all relevant information. In addition to the various sources of information I have already noted, you have access to a police video tape of the Courthouse incident, and you indicated to me that you had also seen video tapes obtained by various news organizations. I believe that, as was suggested to them when your office refused to receive complaints of police misconduct on the afternoon of the Courthouse incident, several persons have filed complaints with the FBI. No doubt you can obtain access to those complaints.

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In the circumstances, therefore, it seems to me that you have more than enough information available or easily obtainable to enable you to proceed with an investigation. And I note, and am grateful for, the assurance in your letter that "our office will continue to explore this incident." If after your investigation you are convinced that there is not sufficient evidence of police misconduct to enable you to prosecute, I think it is incumbent upon you to state so publicly.

I will close this rather lengthy letter with two more comments. First, I want to reaffirm my previously expressed willingness to cooperate with your office in any investigation. I would be less than candid if I did not admit that your letter of May 16th has caused me to have some doubts as to your good faith. To a casual observer, it might appear that your principal response to our original letter has been to investigate the Law Faculty, rather than to investigate alleged police misconduct. You have assured us, however, that you will continue an investigation into all aspects of the Courthouse incident, and I, for one, am willing to put my doubts aside and continue to cooperate with you.

Secondly, I would like to underscore some of the general feelings I expressed to you in our meeting on Monday. I do not understand you to be in disagreement with these feelings. I believe that it is vitally important in these times, as in others, that prosecutorial offices appear to be enforcing the law in an even-handed manner. In the demonstrations in Madison over the past few years unfortunately a number of demonstrators have perpetrated acts of violence. These acts cannot be condoned, and the actors have been prosecuted whenever possible, as is proper. Simultaneously, however, there have been persistent reports of excessive police violence in the course of demonstrations. These reports are not isolated nor are they limited to the most recent round of demonstrations. The Currie Commission investigated, and tended to validate, many reports of excessive use of force by the police in a round of demonstrations occurring four years ago. My recollection is that every round of demonstrations since has given rise to seemingly credible reports of police misconduct. I should hasten to add that it is my very strong conviction that if any of these reports are valid, as obviously I suspect some of them are, I am confident they apply only to a small number of the officers in the Madison area. I have personally observed many officers exercise admirable restraint in the face of very trying circumstances time and time again during these demonstrations. It is nevertheless true that, at least to my knowledge, in the period of the Viet Nam war demonstrations there has never been one officer tried on either state or federal charges, nor have any formal internal police disciplinary proceedings been initiated, as a result of police activity during a period of demonstrations. I can assure you from many conversations with them that many of the participants in these demonstrations now believe that the law as applied in Madison provides the police with a license to beat.

I can fully understand how these demonstrators come to this belief. And the consequences of such a belief being widely held are frightening. It contributes to alienation--a feeling that it is not "our" government but "their" government. Most frightening of all, a belief that the police have a license to beat can provoke the frustrations that can lead to escalated violence. The events of the past week illustrate that we can ill afford any such escalation.

I have decided not to release this letter to the press at this time. We have spent enough time litigating our differences in that forum. Moreover, my primary purpose has never been to embarrass you, but rather to insure that an investigation

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I believe is vitally needed in fact occurs. At the same time, I do stand behind every statement I have made in this letter, and I authorize you to release it to the press if you so desire. I am sending copies to my colleagues who signed our original letter so that they might be informed of the developments with regard to the written statements that I have described herein.

Sincerely yours,

Bill

William C. Whitford
Professor of Law

WCW/vhm

cc: Spencer Kimball
Ted Finman
Robert B. Seidman
James B. MacDonald
Marygold S. Melli
Joel F. Handler
Warren Lehman
Willard Hurst
Orrin L. Helstad
Samuel Mermin
Zigurds L. Zile
Allen Redlich
George Bunn
John E. Conway
John C. Stedman
William A. Clune
Arlen Christenson
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