

CASE OF MICHAEL SWEENEY

I. FACTS

In this case, referred to the Council by the administration on April 10th, the defendant is charged with violating the Fundamental Standard. We find that on February 18, 1970, with a can of red spray paint, he deliberately damaged university property by painting the word "VIETNAM" in letters nine inches high on a sign standing in front of the campus building that houses R.O.T.C. facilities. The wooden sign, which was one foot high and three feet long, bore the legend "HEADQUARTERS/ R.O.T.C./ ARMY, NAVY, AIR FORCE" in three rows of black lettering, each two and one-half inches high. The painted word entirely covered the area of the sign's lettering, but the words were still readable beneath the red paint. A painter from Physical Plant testified as an administration witness that the cost of restoring the sign to its original condition would be about \$18 because the paint used was a lacquer-based spray paint that would require removing the entire painted surface with varnish and beginning again as with a new piece of wood. Incidental expenses of re-erecting the sign were not shown. Virtually all of these facts were stipulated or apparent from the sign. The \$18 estimate was not challenged.

The Fundamental Standard provides:

Students are expected to show both within and without the University such respect for order, morality, personal honor, and the rights of others as is demanded of good citizens. Failure to do this will be sufficient cause for removal from the University.

II. TWO DIMENSIONS OF THE CASE

Although the facts may be easily stated, their characterization is complicated because this case combined two distinct dimensions--one moral-political and one physical. As to the first dimension, the defendant contends that the occasion shows that the painting of the sign was a moral and political act. One of the most fundamental aspects of a university is free expression of conventional and unconventional ideas. There is no monopoly on truth in a university and no prescribed orthodoxy. We would not for an instant consider disciplinary action against this defendant if the charge were solely that he had voiced a political idea on the campus.

But the charge against the defendant is quite different--it is a charge that invokes the second dimension of the case, that the defendant deliberately damaged property that was not his. The essence of this

charge is that "good citizens" do not invade the rights of others--even while making political points. Protection of the property of members of the community against damage from deliberate acts of others has long been treated as a basic aspect of the Fundamental Standard.

The hearing in this case was largely concerned with identifying the relation between these two dimensions. In response to a question concerning property damage, the defendant said that the questioner was taking a "technocratic" view of the case--that the damage aspect was unimportant because of the political aspect. As will be indicated, we disagree.

To summarize this discussion, we consider the case solely as one in which the defendant has been charged with a violation of the Fundamental Standard because he deliberately damaged property. He is not being disciplined because he was engaged in a political act at the time of the damage. Nor does the political dimension of the case justify relieving the defendant of liability for the property damage he committed.

At the outset, the defendant denies the validity of the damage analysis. He argues that there has been no damage in this case because the original message can be read underneath his painted word. Since the sign's function has not been impaired, he claims there is no need for repair. We believe that property owners should be protected against unauthorized alteration of a condition maintained by the owner. One may not paint non-obscuring words on signs, mail boxes or other property of another without accepting responsibility for his behavior and the alterations.

III. WAS THE ACT JUSTIFIED?

The defendant's second contention is that even if his behavior appears initially to violate the Fundamental Standard, his behavior was morally justified and does not warrant punishment. Defendant stated that individuals belong to several interrelated communities and that morality can be judged only in terms of these various roles. During the argument he stressed the world community and the Stanford community.

Concerning the world community, the defendant earnestly and eloquently related his behavior to his perceptions of the connection between many of the world's problems and United States military policy during the last twenty years. He finds this country's involvements in Asia to be morally repugnant and believes that situation has been brought about by this country's military strength. He sees R.O.T.C. as one way in which the military establishment fills its officer ranks so as to be able to pursue its objectives. From this base the defendant contended that it was proper, if not obligatory, to attempt to remove R.O.T.C. from the campus as a step in changing United States military and foreign policy. His behavior was in furtherance of that goal.

As a member of the Stanford community, he contended that R.O.T.C. was unpopular, that the President of the University had railroaded the one-year extension of R.O.T.C. through the faculty and that his February 18th behavior was caused in part by frustration attributable to the rapidity with which the R.O.T.C. issue was being processed within the University. At the same time, the defendant claimed that majority votes on issues of this importance are not conclusive--that some matters are too basic to be resolved by this process--and that he believed, as noted earlier, that he personally must act to end R.O.T.C. on this campus whatever others may think.

We understand the essence of the defendant's argument to be that he has shown as much respect for "order, morality, personal honor, and the rights of others" as the Fundamental Standard demands of "good citizens. The Fundamental Standard was promulgated by Stanford's first president and since then has been an evolving guide to the obligations of Stanford students. The Legislative and Judicial Charter of 1968 created this Council and controls its jurisdiction. Although giving the Council jurisdiction over "all student disciplinary cases," the Charter provides that, except in unusual circumstances, the Council "shall not have jurisdiction over offenses committed outside the University campus." (II.A.2) Yet, that same provision states that even a student's behavior off the campus may lead to his being declared "ineligible to continue as a member of the University community" because he "has grossly violated elemental standards of behavior requisite to the maintenance of an educational community or because his continued presence would adversely affect the ability of others to pursue their educational goals." These provisions indicate that the framers of the Charter intended that the Council adjudicate cases in terms of their effect on this community. We conclude that whether the defendant has behaved as a "good citizen" is to be judged with reference to the Stanford community.

Although the defendant may be a "citizen" of several communities, each may insist that his behavior comply with its essential requirements. If a defendant believes that his obligations as a member of one community require certain behavior, that does not mean that every other community of which he is a member must accept that behavior.

The basic functions of an academic community are learning, teaching, and scholarly inquiry. These activities can be pursued effectively only in an atmosphere in which there is freedom to inquire, to discuss ideas, and to advocate opinions. Each member must be free to think about what interests him and to discuss all matters with those interested, whether the issue be political or abstractly intellectual. Toward this end the university permits and encourages discussion by speech, sign, or symbolic behavior--whether in a public meeting or in an orderly demonstration.

At the same time, we must recognize that academic communities are especially fragile entities which can exist only in an atmosphere of mutual respect and trust so that freedom of inquiry and discussion may be pursued

A university's internal legal system must preserve that atmosphere. Interference with it must be regarded as a violation of the mutual obligations upon which the community is based.

We conclude that the defendant's behavior violated his basic obligations to the community. If his act is viewed as a symbolic statement, defendant has deliberately damaged property not his own while making his point. There are numerous avenues for expressing ideas or engaging in symbolic behavior that do not necessitate damaging property. Such behavior shows a serious lack of regard for the rights of others within this community. On the other hand, if one views his act as more directly aimed at expediting the removal of R.O.T.C. from the campus, the act is inappropriate because it signifies that discussion and persuasion are being replaced by coercive property damage.

The defendant's behavior in this case is serious, not only because he did \$18 worth of damage, but because he asserted the right to damage property if it would further his own goals. This position demonstrates a total lack of understanding of the nature of an academic community and of the harm that it can suffer from such behavior.

We turn now to two possible objections to this analysis. The first is that it is narrow-minded and futile to worry about preserving a university's fragile values because there is so much violence and coercion all around us. Though we may accept the premise, we reject the conclusion. We believe, and we think the community overwhelmingly agrees, that the university is a distinct and significant institution whose values are worth preserving even though other parts of the society may be coercive and immoral.

Secondly, one might question the value of preserving universities as centers of learning and scholarship. Even when universities were "ivory towers," the criticism issuing from it significantly affected the rest of the society. Recently, universities have taken a more active role in studying social problems--and groups within the university have undertaken projects to aid neighboring communities and other groups. Throughout this development, however, teaching, learning, and scholarship have continued to be the primary university functions. It may well be that we are in a period of transition from which universities will emerge as institutions primarily devoted to the attainment of identifiable social goals--with learning and scholarship relegated to secondary roles, if they are retained at all. If that should happen, totally different internal controls would be needed to reflect the changed goals so that, for example, individuals might have to pledge their agreement with a particular institution's social goals before being permitted to enroll. We believe that the future course of this university on so fundamental a question should not be decided by this council. Our primary role is to interpret and apply disciplinary provisions and not to prescribe a profound change in the university's direction.

IV. SELECTIVE PROSECUTION ISSUE

Finally, it is urged that the defendant in this case has been the victim of selective prosecution because others who have painted signs in recent years have not been prosecuted before the SJC. The defendant explicitly chose not to rely on this argument but it was raised by a Council member during the hearing.

Apart from the theoretical question of whether it is appropriate for a court, or this Council, to reject a valid case because others alleged to be like it have not previously been brought, there are more practical answers.

As everyone is aware, standards of student behavior have been changing rapidly in the last few years. Behavior that was punishable a few years ago--such as liquor usage and women's social rules--no longer raise problems. On the other hand, pranks that have been accepted in the past are now viewed as unjustified behavior. It is in this latter context that the selective prosecution argument claims its greatest strength--that Stanford students who have painted "Beat Cal" on the campus have not been prosecuted for violation of the Fundamental Standard. That situation, however, is inapposite. First, it is not at all clear that if a student were caught at such behavior in 1970 it would not present a Fundamental Standard question. Indeed, a somewhat similar case is now pending before the Council. Second, in many of the prank cases and others, the persons involved readily recognize that they have done harm and are eager to pay for it or to repair it themselves. (Repair is most easily accomplished in cases in which the harm is transitory--as where washable paint is used.) Where, as here, the defendant's position is that he has inflicted no harm whatever, a disciplinary case may be the only appropriate way to convince the defendant that he has behaved unacceptably.

But perhaps the most conclusive answer to the selective prosecution argument is to be found in the administration's actual practice. Even before this case had arisen, the Dean of Students had sent to this year's Council three cases that bear on this one. In the first, two defendants made an unauthorized entry into a university building and were apprehended there by Stanford police who had been called by persons who thought a burglary was in progress. In fact the students were seeking a shortcut to friends elsewhere in the building. The students fully realized that they had behaved improperly and had no business in the part of the building in which they were apprehended. Even though no harm to property was involved, the Council (one member dissenting) concluded that there had been a violation of the Fundamental Standard, and imposed a light penalty.

In the second case, a group of students, without authorization, moved a tractor from a construction site to their living unit in the early morning hours. The Council unanimously found their conduct to be a violation of the Fundamental Standard and levied a fine on the only defendant who had been identified and who was still on the campus.

In the third case, a defendant, under the influence of alcohol, committed \$100 worth of damage to University residences. The Council found a violation of the Fundamental Standard and ordered him to make full restitution and to pay an additional fine of \$50. He was also warned that such behavior in the future might involve much more serious punishment. It is perhaps relevant that the defendant was a campus figure who one might have expected the administration to try to shield from punishment if it were being highly selective about those whom it was prosecuting. A companion was fined \$50 for his part in the episode.

Since virtually all defendants in non-political cases choose to assert their right to confidential treatment, the public learns little about such cases and lacks broad perspective. In fact, this year's Council experience refutes a claim of selective prosecution--in two of the cases there was no actual damage while in the third there was no sharply focussed intent to cause damage. Although we reject the selective prosecution argument, we urge the administration to attempt to avoid similar future claims by pressing disciplinary charges against all students who deliberately damage property.

V. RECOMMENDATION

We recommend that the defendant be found guilty of a violation of the Fundamental Standard and that he be punished as follows:

1. That he make restitution to the university in the amount of \$18.
2. That he be fined \$10 to be paid to the Dean of Students for use as emergency funds by needy students.
3. That both amounts must be paid before the defendant be permitted to obtain his degree.

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Date: May 1, 1970

JIM WARE'S CONCURRING OPINION

I concur in the majority opinion but wish to clarify one point. Although sound as applied to these facts, some of the opinion's language, if taken out of context, might suggest that deliberate property damage is never justified in an academic community. This is surely the ideal, but I can conceive of extreme situations in which an academic community is so closed to free expression and to notions of change that fair-minded judges might be unwilling to punish those who use means other than rational persuasion to open that community--after having tried persuasion extensively first.

But that problem is not present in this case because Stanford is now indisputably an open community and the particular issue of R.O.T.C. has been discussed extensively both before and since February 18th.

The Stanford Daily has carried articles, editorials, letters to the editor, and advertisements on the issue from the moment it arose this year until the student referendum had been concluded. The Chaparral, of which defendant was editor, devoted an entire issue to R.O.T.C. An entire issue of the Campus Report was devoted to faculty statements pro and con before the faculty-wide referendum was held. Many noon rallies and other public meetings were devoted to the issue. Of course, not every individual could personally gain the ear of everyone he wished to reach but it is clear that by any reasonable standard, the channels were open for discussion and information.

Although the defendant may object to the way the issue was being handled, Stanford in no way approaches the closed community situation in which resort to behavior other than pure discussion might be justified. Therefore, property damage was not necessary or justified in the instant case.

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