SJC Case No. 42 (1970)

CASE OF THE BAC DOOR BLOCKING, MAY 12, 1970

OPINION

1. The defendants moved to dismiss the case on the grounds that they had not learned of the specific charge until the morning of the hearing and that no defendants had ever been given notice of the specific time, place and other details of the charge. Since this case had been begun under the Provost's decree of May 11, 1970, under which those who gave their names at the door were to report to the Chairman of the SJC for the scheduling of a hearing, they received no formal letter of charges. The Council decided, however, that in the nature of this case there was no prejudice from not receiving a formal statement of time and other allegations. The Council also concluded that to charge a defendant with violation of the Disruption Policy without specifying which particular provision or provisions within it were being proceeded upon gave the defendants adequate notice of the nature of the charge against them. Further specificity was not required.

2. A motion was made to dismiss the case on the ground that the SJC had no subpoena power and that the defendants were at a disadvantage in obtaining witnesses. That motion was rejected on the grounds that the defendants had made no showing that they had tried to get these witnesses by their own efforts and that they had failed to make any request of the Council for assistance in such efforts until the actual start of the hearing.

3. A motion was made to dismiss the case on the grounds that the proceedings were directly the result of the Lyman decree of May 11, 1970 and that such decree was inoperative because the requisite "extraordinary circumstances" did not exist--or that, at the very least, it was the prosecution's burden to say that a reasonable man could conclude that an Article IV procedure was warranted. The Council ruled that the validity of the May 11 decree was not an issue in the case. Different members were persuaded by one or more of three views. The first was that an invocation of Article IV powers is unreviewable by the SJC--that a disciplinary council ought not to engage in the decision of such broad problems as whether conditions at a particular time

policy's first paragraph—requiring that one "disrupt the effective carrying out" of a University activity. It is under the already quoted second part of that paragraph, which has no such element. As noted earlier, we believe that such movement is not rendered illegitimate even if R.O.T.C. were to be determined to be "illegitimate." Further, the Council concluded that the defendants could not contend that they were entitled to acquittal on the ground that R.O.T.C. was improper on the campus or that their political perceptions were accurate. The first two paragraphs of the disruption policy reflect the fundamental balance for this university community:

> Because the rights of free speech and peaceable assembly are fundamental to the democratic process, Stanford firmly supports the rights of all members of the University community to express their view or to protest against actions and opinions with which they disagree.
>
> All members of the University also share a concurrent obligation to maintain on the campus an atmosphere conducive to scholarly pursuits; to preserve the dignity and seriousness of University ceremonies and public exercises; and to respect the rights of all individuals.

Individuals or groups may not override this reconciliation of competing claims by asserting or establishing that their priorities differ from those set forth in the policy.

7. Entrapment. The defendants argued the defense of entrapment based on the fact that Colonel Ramey's effort to enter was obviously made as the result of a decision emanating from the President's office on May 11th and was not based on a genuine desire to enter the building. Colonel Ramey did not deny that the procedure and effort were made at the behest of the President's office, but he did assert that it had been his intent to enter the building—not to assemble a set of defendants for the SJC. It seems clear that he got his team together and had the students in the class called after learning of the plans for May 12th. But nothing in his testimony detracted from his stated desire to enter the

building, from which he had been blocked for over a week and which he had previously informed President Pitzer he wished to enter. (Also there was no "entrapment" because there was no enticement--neither Colonel Ramey nor anyone else induced the students to sit in the doorways. That was clearly their choice.)

8. Selective Prosecution. The defendants also argued that they should not be found guilty because they had been the subject of selective prosecution. This was based on two separate arguments. First, they presented testimony from one of their group who had left after Colonel Ramey read the request to step aside and the consequences of failing to do so. This student then returned in time to catch the member of the team who had been writing down names and tell him that he had changed his mind and was returning to the doorway. He gave his name but it did not appear on the list and he was not prosecuted in this case. On a more general level, the defendants spoke of others who had blocked access to the same building both before and after May 12th but who had not been prosecuted. They also cited other buildings that had been blocked but as to which there had been no prosecutions. The defendants submitted a group of undated sheets signed by many students stating that to achieve four strike goals they "have been blocking doorways and preventing business as usual."

The Council has concluded that selective prosecution is not a defense in this case. First, it is unrealistic to argue that there is any obligation on the administration to proceed against all persons who have engaged in certain behavior or against none. Many factors might appropriately warrant different treatment as to different buildings or even as to the same building at different times. During times of high tension on the campus an administration might think it wise not to risk further heightening of tension by attempting to oust those blockading a building. If tension lessens, the administration might think it appropriate to hope that those blocking access will desist. It may well be that in this case, because of its failure to act during the prior week the administration felt a special obligation to warn students before finding them in violation of the disruption policy--hence the special effort to give students a chance to leave and warn of consequences.

The factors discussed above suggest a few reasons why it cannot be a defense that some who commit the same act are not prosecuted. We do not mean to suggest that selective prosecution is always justifiable. Selective treatment based on racial or political lines is repugnant to the fundamental sense of decency that must exist on this campus. But none of the instances cited by the defendants appear to involve such considerations.

9. Penalty. On this phase of the case the Council heard extensive testimony from the group on such questions as motivation for sitting in, efforts made by the group to get action on the R.O.T.C. issue through channels and an extensive history of the R.O.T.C. issue on this campus. Although the Council found the sincerity of the defendants, individually and as a group, compelling, we nevertheless view the act of blocking access to a university building to be a very serious violation of university obligations, perhaps warranting penalties in the range of suspension. The Council, however, in this case, believes that some leniency is warranted because of the concerted and successful effort to keep the venture non-violent, because of the nature of the group's motivations, and because of their efforts to work through regular University procedures in other phases of their activities.

RECOMMENDATION

1. We recommend that the following defendants be found guilty of a violation of the disruption policy.

Charles Alston
David Axel
Peter Barab
Mary Heinzerling
David Iverson
Richard Jaffe
Jill Joseph
Wade Killefer
Ted Loring, Jr.
Jennifer Nichols
Malcolm Snider
Robert Tiemann

2. We recommend that each of the defendants, all first offenders, be fined the sum of $75 to be paid to the Dean of Students for use as emergency funds by needy students.

3. We recommend that all fines be paid before registration for the fall quarter of the 1970-71 academic year, except that those graduating before that time must pay their fines before receiving their degrees. The Dean of Students may postpone payment of an individual student's fine if he finds that immediate payment would cause undue financial hardship. In no event, however, should a university degree be awarded any defendant until he has paid this fine in full.

H. Kenton Ralph

Mr. Karowsky filed an opinion concurring as to guilt but dissenting as to penalty, in which Mr. Ware joined.

Messrs. Dietz, Halliburton and Horowitz took no part in the decision of this case.

June 8, 1970

DISSENT ON PENALTY

While concurring on the question of guilt, I cannot, in good conscience concur on the assigned penalty in this case. A brief description of the Council's reasoning may be useful.

Some Council members found precedence for penalty in Case #13 of 1969 (Encina Hall sit-in of May 1, 1969) and Case # 37, just recently decided (Academic Council disruption of April 3, 1970), between which the instant case falls. The Encina sit-in was (1) somewhat prolonged; (2) militant; (3) violent, to persons and property; (monetarily expensive to the University; (5) purposefully disrupting the "atmosphere conducive to scholarly pursuit." The penalty for first offenders was $75, a letter of censure, and one year probation.

The Academic Council Case (Case #37) was considered to be a momentary, but raucous disruption, damaging only the pride and decorum of the Academic Council. Case #42, on the other hand, was considered to be (1) prolonged; (2) militant; (3) non-violent (indeed, attempting to be a showcase of non-violent protest and its fruits to a violence-torn campus); (4) costly to the University in finances and pride; (5) with the explicity intention to "prevent or disrupt the effective carrying out" of ROTC activities and to "obstruct the legitimate movement of any person" connected with ROTC; (6) directly associated to the cause of their dissent.

As indicated in points 4 and 9 of the general opinion, the Council decided that issues of perception, motivation and morality would be germane only to mitigation of guilt and the resultant lessening of the penalty. The scholarly and compelling motivational statements implied the present divergence of university institutional and individual moral values. Persuaded by these arguments, I felt the allure to each. It is our obligation as a court and function of the University to enforce its rules and uphold its values. We have done this in our finding of guilt. However, we must also recognize that persons often feel the individual obligation to bear moral witness to their cause, as in this case. I fear far more the rise of violence to property and person than I do the type of activity these defendants undertook. Ideally, neither should be necessary, especially at a center of understanding and enlightenment, such as a university -- ergo, my vote to find guilt. But it is appropriate when considering penalty to consider what types of institutionally impermissible behavior are more antithetical to univeristy values and atmosphere, and which should be subjected to more severe sanctions. I believe a $25 fine is adequate.

Lynn D. Karowsky

Mr. Ware joins this opinion.

warrant the invocation of Article IV powers. This was seen as a political question which had to be resolved by the constituencies through the political process and not by the Judicial Council. The second reason was a view that in the Legislative and Judicial Charter the President had relinquished some powers to the SCLC and the SJC but that such delegation in the absence of extraordinary circumstances, only gave those bodies "primary responsibility" and not complete responsibility and that what was happening in this case was that the President was affecting the responsibility of the SCLC and the SJC. The third view was that the first part of Article IV deals with the residual authority of the President to " promulgate and enforce regulations governing student conduct at Stanford" while the remaining part of the sentence dealing with "extraordinary circumstances" refers only to "promulgating" and says nothing about enforcement. Some viewed the decree as a mode of enforcement of the Disruption Policy rather than as a promulgation of any student disciplinary regulations. On this view the subject of extraordinary circumstances was irrelevant.

4. At this point the defendants made an informal motion as to whether it would be permissible on the question of guilt and innocence to prove that R.O.T.C. was not a legitimate activity on the campus. The Council decided that this question was not in the case and thus evidence on it could not go to guilt or innocence. It did decide, however, that defendants' attitudes concerning R.O.T.C. were relevant on the question of motivation and would be heard on that issue. The basic thrust of the defendants' position was that the legitimacy of R.O.T.C. on the campus could not be raised in any other place and that this was an appropriate forum for resolution of that question. The Council rejected this view of its function. Defendants, however, also had a second argument which was that since it had become clear they were being charged with violating the second part of the first paragraph of the Disruption Policy (which makes it a violation to "obstruct the legitimate movement of any person about the campus or in any university building or facility") the movement of an R.O.T.C. officer into the building in question could not be a legitimate movement if the R.O.T.C. activity in

general was not a legitimate activity. The Council recognized that the meaning of "legitimate movement of any person" was open to interpretation but decided that the illegitimacy of an activity was unrelated to the phrase "legitimate movement" in the Disruption Policy and that movement could be legitimate even though the activity was not. On this view the legitimacy of R.O.T.C. as an activity on the campus was outside the scope of the case.

5. Self-incrimination. The prosecution attempted to identify the defendants as having been involved in the May 12th episode by the following chain. As a result of the May 11, 1970 decree issued by Provost Lyman under President Pitzer's authority in exercise of his Article IV powers and a set of instructions to teams organized pursuant to the decree, a student who refused to permit access to a building was required to identify himself to a member of the team and to report to the chairman of the Judicial Council for the scheduling of a hearing. Should he fail to do these things he would be suspended for the remainder of the spring quarter in addition to further punishment for any violation of the disruption policy. At the hearing, the administration sought to establish its case by introducing the testimony of Lt. Clark who had listed the names as the defendants uttered them and had placed each name in its appropriate place in a sketch of the group. After photographs taken at the scene by a photographer had been developed, Lt. Clark was able to identify those in the photographs from his sketch. The names of those so identified were placed on the back of each photograph and keyed to numbered circles on the front of the photograph. When the administration sought to introduce the photographs in evidence objection was made on the ground that the procedure followed violated the right of a student to refuse to incriminate himself--a right contained in Article II. E. 2 of the Charter. The Council heard several hours of legal arguments on all phases of the issues (from Mr. Anthony Trepel for the defense and Mr. Paul Valentine for the administration). After extensive consideration we have reached the following conclusions.

a. It is permissible to require students who appear to be in clear violation of a campus regulation to identify themselves--even under threat of serious punishment for refusal. The university has no process for arresting or restraining persons believed to have violated campus regulations. The

requirement that one identify himself in such a situation is an appropriate way for the community to assure itself that the individual can be identified and will be available for any future disciplinary proceedings.

b. Once a student is coerced to identify himself, however, the privilege against self-incrimination requires that the administration not prove the student's identity at the hearing out of his own mouth. This means that the administration may not forge a vital link in its case by evidence that a particular defendant--under coercion--identified himself to a witness.

But in this case the names of the defendants were not crucial to the proof of the violation of the disruption policy---the critical element was that the persons who had been at the scene were the same persons as those before the Council, whether they had names attached to their faces or not. It is true that these students would not have been before the Council if they had not identified themselves, but we have already noted that this identification requirement is permissible, if not essential, on a university campus. The Council thus judicially knew the identity of those before it and the administration need only have established the identity between those who were photographed in front of the doors and those persons in the courtroom though it could attach no name to any defendant--the Council could do that. It might be noted that state courts can try, convict and punish a person without ever knowing his name. That is made possible by the power of incarcerating the unidentified person in order to assure his presence at judicial proceedings. The student's name serves that function in a campus case.

c. Thus, in this case although Lt. Clark did in fact use the list of names to identify those on the photograph that was not essential to the case and no unfairness resulted. The photographs themselves were perfectly adequate to make the case against each of the defendants before the Council on the issue of identification. We might note in passing that several other approaches are also possible under our analysis, including on-the-spot identifications by those who know the defendants; taking photographs and asking members of the community to identify those persons they know; and comparing such photographs against a file of student photographs. In each of these cases students can be forced to identify themselves for purposes of assuring their presence at

judicial proceedings, but any case can be proven without prosecution use of the names obtained. The Council rejects the view that any use whatever of the lists of names in the preparation for trial would require dismissing the case. We leave for future cases the question of how much the names may be used but note that we believe that the critical issue is comparing the role played by the list in the process with the basic fairness that underlies the self-incrimination protection.

d. We also note one troublesome aspect of the decree of May 11, 1970. The procedure is triggered "by a member of the University community acting in an official role" who determines when students "appear to be in clear violation" of the disruption policy. In such a case the students who identify themselves must report to the Chairman of the Judicial Council "for scheduling of a hearing." This sounds as though a hearing is being ordered in all cases. We entirely agree that a hearing was warranted in the instant case but note that we believe it appropriate for the Council in this type of case to ascertain for itself whether the fact basis existed that would justify invocation of the compulsory identification procedure.

6. Evidence of Guilt. Colonel Ramey testified that he had approached the door and asked to be permitted to enter. He testified that a Military Science 4 class had been scheduled for that morning and also that he wanted to get to his office. Colonel Ramey's testimony about the nature of the situation at the front and back doors of the Board of Athletic Control Building (BAC), that his requests were denied, and that he refrained from trying to force his way through, together with the photographs showing the students tightly grouped in front of the doors establish that the defendants have indeed violated the second part of the first operative paragraph of the disruption policy by "obstruct(ing) the legitimate movement of any person ..... in any University building." The movement was legitimate because Colonel Ramey had an office in the building and the class was normally scheduled to meet in that building. Efforts were made to get Colonel Ramey to say that even though he was blocked from the building, the operation of R.O.T.C. was not substantially interfered with because some classes were being held elsewhere, the office work was being done off the campus, and similar points. Even if we were to agree that there had been no substantial interference with the R.O.T.C.'s operation that would be irrelevant on the question of guilt in this case. The charge is not under the first part of the disruption