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.