SJC Case No. 44, 1970

CASE OF THE SECOND B.A.C. DOOR BLOCKING (MAY 13, 1970)

OPINION

1. This case involved charges against 28 students arising out of alleged blocking of doorways at the Board of Athletic Control building and the Armory on May 13, 1970. Pursuant to the May 11, 1970 decree of Provost Lyman, teams of persons sought entrance to these two buildings. At the hearing, an effort was made by each of the six team members to identify in the courtroom persons who had obstructed their entry on May 13th. Three of the witnesses could identify no one as being there specifically on May 13th. One witness identified two of the defendants; one identified the same two defendants plus a third person not a defendant; and one identified two persons, one a defendant and one not. As a result of these preliminary identifications, three of the defendants, Richard Carp, Jill Joseph, and Cecilia McGhee, were required to proceed with the hearing. One defendant, Richard Simon, was absent and his case was not considered. The cases of the remaining 24 defendants were dismissed at that time.

2. Defense counsel, Dent Hand, moved to dismiss the case against Miss McGhee because her identification had been entirely fortuitous in that one of the witnesses had previously known her from a classroom context--and this led to an unfair result in this group of cases. The Council, given the positive identification, found no reason not to proceed.

3. Mr. Hand moved to require the administration to prove beyond a reasonable doubt as part of its case that the defendants had received notice of the charges by a proper summons. The Council denied the motion on the ground that if a defendant contended that any procedural right had been denied, it was incumbent upon him to raise the point. The administration need only prove the substantive parts of its case beyond a reasonable doubt.

4. After conducting voir dire of the Council, Mr. Carp appointed Mr. Hand his attorney and took no further part in the case. Jill Joseph and Cecilia McGhee acted similarly. All three asked to have the motivational statements made in Case No. 42 considered as theirs.

5. Mr. Hand moved to dismiss the proceedings on the ground that the Council was not bound by a requirement of unanimous decision and that

this was unfair in a criminal context. The Council denied the motion on the ground that there was nothing inherently unfair in permitting majority verdicts to control in these cases. Although other models might be imagined--such as a single hearing officer, or a judge and separate jury--the present combination of both functions in one body did not violate any deeply held notions of justice. (The Council also recommends acquittals by majority vote, thus avoiding all problems of hung juries.)

6. Evidence of Guilt. Colonel Thomas testified that he had led the team to the B.A.C. and had desired to enter his office, from which he had been blocked for ten days. He testified that he had followed the instructions accompanying the May 11, 1970 decree precisely; that he requested entry at the door and that those clustered in front of the door refused to move. He made no effort to enter after the denial. Lt. Clark testified that he heard Colonel Thomas read the statement at the front of the building and that he identified Cecilia McGhee whom he knew from before, in that group near its center; that after the reading of the announcement Miss McGhee did not move. At the back door Lt. Clark saw a person later identified as Richard Carp blocking access after the statement had been read. Although there was some conflict as to the identification of Mr. Carp, the Council accepted his identification by two of the administration witnesses.

Jill Joseph was identified as having been blocking access at the armory on that morning by one witness. That witness, however, also identified another person as having blocked his way whose name appeared on no list of door blockers taken on that day. The witness was "positive" about both of his identifications. Even though he had seen the defendant on an earlier occasion, the Council did not believe that this case had been proven beyond a reasonable doubt.

The defense argued that there had been no "obstruction in this case as required under the second part of the disruption policy's first paragraph which makes it a violation to "obstruct the legitimate movement of a person . . .in any university building." The contention was that after asking to be admitted, Colonel Thomas made no attempt to move forward to see what would happen. There was testimony that since the doors opened outward it would not have been possible to gain access to the building by trying to step between people even if that had been possible. But more basically, we disagree totally with the suggestion that anything more than a request was necessary. It

would be intolerable to require a physical confrontation before the disruption policy could be invoked. To require some forward movement after entry has been denied would be to court a serious risk of physical violence.

The defense argued that there had been no interference with the "legitimate movement of any person" because there had been no sincere effort to enter the building. Even though it may be true that the team that approached the building was doing so in pursuance of an administration plan, Colonel Thomas testified that he indeed wished to reach his office and that he was "hopeful of access" on May 13th as he approached the building. Although the group was prepared to take names and follow the May 11th procedure if denied access there was nothing to suggest that this was the sole, or even main, purpose of the team.

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.

The Council recommends that Richard Carp and Cecilia McGhee be found guilty of violating the disruption policy.

7. Penalty. There is virtually no difference between the behavior engaged in by these defendants and that engaged in by the defendants in Case No. 42, which had occurred on May 12, 1970. Indeed, these two defendants wished to treat the extensive motivational statements of the earlier group of defendants as their own. We recommend the same penalty for these two defendants as we did in the earlier case.

RECOMMENDATIONS

1. The Council recommends that Richard Carp and Cecilia McGhee be found guilty of violating the disruption policy.

2. The Council recommends that Jill Joseph be found not guilty.

3. The Council recommends that cases be dismissed against the following because of a total failure of identification:

Steve Abrams
Margaret Belmont
Jonathan Blees
Joanne Bosche
Doug Bolgiano
Craig Carver
Bryan Fry
Monica Glickman
Maude Haimson
Tally Kaufmann
Jon Kathe
Roberta Lynn Keller
Larry Keuchler
James Kratzer
Alan Lewis
Pauline Lord
Lane Morgan
Douglas Scott
Peggy Scott
Shelley Surpin
Joyce Van Dyke
Nancy Van Voorhiis
Claudia Wilken
Wendy Williams

4. The Council recommends that Mr. Carp and Miss McGhee each be fined the sum of $75 to be paid to the Dean of Students for use as emergency funds by neeedy students.

5. 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.

Messrs. Karowsky and Ware concur as to guilt but dissent as to penalty.

Leonard M. Horowitz

Jim Ware

Ron D. Frankel

Messrs. Dietz and Halliburton took no part in this case.

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.