

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 explicit 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 university values and atmosphere, and which should be subjected to more severe sanctions. I believe a \$25 fine is adequate.



Lynn J. Karowsky

Mr. Ware joins this opinion.