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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

PALO ALTO BRANCH

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers,

Plaintiff,

vs.

No. P 16419

ALAN C. ALHADEFF, JOHN WALLACE AVERY, RONALD BERLIANT, ANNE CLAUDIA BAUER, WILLIAM C. BLACK, RICHARD STEVEN BOGART, BARRY LINCOLN CAPRON, ROBERT ARDEN DELFS, ARTHUR M. EISENSON, JEANNE TOBY FRIEDMAN, BARBARA ANN GOLDIE, WILLIAM WELSH GRAHAM, HALLAM CALVIN HAMILTON, MARY ANSORGE HANSON, STEPHEN JOHN HEISER, MARC DAVID HELLER, KRISTIN DANA HIND, SUSAN LEE HUDGENS, RICHARD A. LEVIN, MICHAEL MATTHEW MENKE, JOHN C. PERRIN, NEAL OKABAYESHI, DALE POLITZER, DAVID FRANCIS PUGH, PAUL RUPERT, AMANDA GWYN RUTHERFORD, WILBUR ARROYO, JAMES ELLIS SHOCH, JOHN FREDERICK SHOCH, STEPHEN S. SMITH, GUY DOUGLAS SMYTHE, DON PHILIP STUART, PHILIP J. TROUNSTINE, MICHAEL DAVID VAWTER, DORON WEINBERG, MICHAEL M. WEINSTEIN, MARC ALLAN WEISS AND DOE ONE THROUGH DOE FIVE HUNDRED, INCLUSIVE,

Defendants.

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISSOLVE AND IN SUPPORT OF PRELIMINARY INJUNCTION

Defendants' motion to dissolve the Temporary Restraining Order issued by this Court on May 1, 1969 is based upon the sole ground that Carroll v. President and Commissioners of Princess Anne, 393 U.S. 175 (1968) holds that ex parte orders are improper in free speech cases.

This case has nothing to do with free speech. Defendants and the April 3rd Movement in which they "are participating" (Dfts. Memo, p. 2) have had the opportunity to speak freely, without restraint, on campus, day and night since April 3, 1969. And they have held large rallies at which they have spoken freely, at length, without restraint, right in the middle of campus, day and night since April 3, 1969. (Press Aff.)

The Temporary Restraining Order does not limit the April 3rd Movement's opportunity to do those things, and its members are free to keep doing them, should they want to. In fact they have kept doing them ever since the Temporary Restraining Order was issued. (Press Aff.) That Order simply restricts defendants from disrupting and obstructing the free use of buildings and the legitimate movement of people, who have business of their own to do on campus.

The distinction between free speech and obstructive acts is not occult and it is not new.

Cox v. Louisiana, 379 U.S. 536, 554-555 (1965):

> "One would not be justified in ignoring the familiar red light because this was thought to be a means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement. A group of demonstrators could not insist upon the right to cordon off a street or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations. [Citations omitted]

". . . We reaffirm the statement of the Court in [citation omitted], that 'it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.'" pp. 554-555 (Emphasis added)

Adderley v. Florida, 385 U.S. 39, 47-48 (1966):

". . . Nothing in the Constitution of the United States prevents Florida from even-handed enforcement of its general trepass statute against those refusing to obey the sheriff's order to remove themselves from what amounted to the curtilage of the jailhouse. The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. For this reason there is no merit to the petitioners' argument that they had a constitutional right to stay on the property, over the jail custodian's objections, because this 'area chosen for the peaceful civil rights demonstration was not only "reasonable" but also particularly appropriate. . . .' Such an argument has as its major unarticulated premise the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please. That concept of constitutional law was vigorously and forthrightly rejected in two of the cases petitioners rely on, Cox v. Louisiana, supra, at 554-555 and 563-564. We reject it again. The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose." pp. 47-48 (Emphasis added)

Cameron v. Johnson, 390 U.S. 611. 617 (1968):

". . . But 'picketing and parading [are] subject to regulation even though intertwined with expression and association,' [citation omitted], and this statute does not prohibit picketing so intertwined unless engaged in in a manner which obstructs or unreasonably interferes with ingress or egress to or from the courthouse. Prohibition of conduct which has this effect does not abridge constitutional liberty 'since such activity bears no necessary relationship to the freedom to . . . distribute information or opinion.' [Citation omitted] The statute is therefore 'a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and . . . the fact that free speech is intermingled with such conduct does not bring it within constitutional protection.' [Citation omitted]" p. 617

Grossner v. Trustees of Columbia University in City of N. Y., 287 F.Supp. 535, 544-545 (S.D.N.Y. 1968):

> "Our highest Court has made clear in the labors of a long generation that the First Amendment's mandate protecting free expression 'must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow.' Bridges v. State of California, 314 U.S. 252, 263, 62 S.Ct. 190, 194, 86 L.Ed. 192 (1941). The Court has insisted steadily on the 'principle that debate on public issues should be uninhibited, robust, and wide open * * *.' New York Times Co. v. Sullivan, 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964). It has also made clear, however, the gross error of believing that every kind of conduct (however non-verbal and physically destructive or obstructive) must be treated simply as protected 'speech' because those engaged in it intend to express some view or position. E.g., United States v. O'Brien, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968); Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 498, 69 S.Ct. 684, 93 L.Ed. 834 (1949); cf. People v. Stover, 12 N.Y.2d 462, 240 N.Y.S.2d 734, 191 N.E.2d 272, appeal dismissed, 375 U.S. 42, 84 S.Ct. 147, 11 L.Ed.2d 107 (1963). Similarly, the Court has rejected the notion that 'everyone with opinions or beliefs to express may do so at any time and at any place.' Cox v. State of Louisiana, 379 U.S. 559, 574, 85 S.Ct. 476, 486, 13 L.Ed.2d 487 (1965); Adderley v. State of Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 149 (1966). Without such inescapably necessary limits, the First Amendment would be a self-destroying license for 'peaceful' 'expression' by the seizure of streets, buildings and offices by mobs, large or small, driven by motive (and toward objectives) that different viewers might deem 'good or bad.' Cox v. State of Louisiana, supra, 379 U.S. at 567, 85 S.Ct. 476. It is such a license plaintiffs claim when they state the basic premise of their lawsuit as follows:
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> > 'Plaintiffs maintain, consistent with the American tradition of democratic and legal confrontation, that the non-violent occupation of five buildings of Columbia University for less than one week in the circumstances of this case is fully protected by the First Amendment guarantees of the right to petition government for the redress of grievances, * * * to assemble and to speak. Plaintiffs maintain that the non-violent occupation of the

buildings was absolutely necessary to breathe life into the First Amendment principle that government institutions should reflect the will of the people and that this interest must prevail under any balancing test against the inconvenience to defendant Columbia University in having five of its buildings occupied by students for approximately one week.'"

" . . . Whatever it is meant to mean, and whatever virtues somebody might think such ideas might have in other forums, arguments like this are at best useless (at worst deeply pernicious) nonsense in courts of law. See Fortas, Concerning Dissent and Civil Disobedience 34 (1968); and see id. at 15, 18, 30, 46-7, 62-3." pp. 544-545 (Emphasis added)

See also, In Re Bacon, 240 C.A.2d 34 (1966) (Sproul Hall sit-in properly held criminal trepass); San Diego Gas & Elec. Co v. San Diego Congress of Racial Equality, 241 C.A.2d 405 (1966) (sit-in properly enjoined; utterances by sit-inners not properly enjoined).* Cf., Cox v. New Hampshire, 312 U.S. 569 (1941) (city ordinance respecting right to parade is a proper regulation because it respects time, place and manner).

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* Moreover, the Carroll rule is applicable only to injunctions which are obtained by public authorities and which restrain speech uttered on public property. Stanford is not a public authority, the property to which this injunction applies is not public property, and the fact that Stanford receives Federal financial support does not make it or its property "public". See Grossner v. Trustees of Columbia University in City of N.Y., 287 F.Supp. 535 (S.D.N.Y. 1968); Greene v. Howard University, 271 F.Supp. 609, 611-613 (D.D.Col. 1967); Powe v. Miles, 407 F.2d 73 (2d Cir. 1968); Stanford University Bulletin, esp. pp. 10-12, and Financial Statement, esp. p. 14, Exs. A and B to Wolpman Affidavit. Neither do the cases upon which plaintiff relies. Marsh v. Alabama, 326 U.S. 501 (1946) (Dft's Memo, p. 3) Food Employees v. Logan Plaza, 391 U.S. 308 (Dft's Memo, p. 3) and Schwartz - Torrance Investment Corp. v. Bakery & Confectionery Workers' Union, 61 C.2d 766 (1964) (Dft's Memo, p. 3) hold that the First Amendment applies to speech peacefully uttered upon streets and highways of a company town, whose function is the same as a traditional government owned municipality's, and upon streets and highways of a shopping center, whose function is the same as a traditional government owned municipality's business district. Terry v. Adams, 345 U.S. 461 (1953) (Dft's Memo, p. 3) holds that a Texas county political organization cannot exclude Negroes from voting in a preprimary which in fact determines the results of the primary and the election, and is merely a ruse by which the State disenfranchises Negroes. (Footnote cont. on p. 6)

CONCLUSION:

The Temporary Restraining Order should not be disssolved and a preliminary injunction should be issued.

Dated: May 9, 1969

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* (Footnote cont. from p. 5)

In any event, the Court need not reach the issue as to whether Stanford is a public institution, because the injunction is proper whether Stanford is a public institution or not. See pp. 2 - 5, above.