SEPARATE OPINION OF FREDERICK DIETZ

The defendants were guilty of violating the campus disruption policy when they stayed in the council meeting after being requested to leave by the meeting chairman, President Pitzer. The petitioning process requesting that they be allowed to stay had occurred, and their request had already been denied at the time when President Pitzer asked them to depart.

We are not passing on the wisdom of President Pitzer's decision not to immediately allow the uninvited students to elaborately air their views, or on the fairness of the procedures used in the Academic Council. However, one views the wisdom of the decision to summarily exclude the students from the Academic Council, the Council has that right just as other campus groups have the right to restrict participation in their meetings and to control their own agendas. There was not a denial of first amendment rights in telling students they would not be allowed to remain.

Whatever doubts one may have about whether the defendants were in violation of the disruption policy when they refused to leave, the defense left uncontroverted President Pitzer's testimony that no one left the meeting even after he declared there was a disruption.

The defendants stressed that they did not intend to disrupt the meeting, but the conduct of the group (1) after President Pitzer's initial request to leave, and (2) after his declaration of a disruption, undermine the plausability of their profession of intent. There is no evidence from their conduct that they would have left had not the state court injunction been read.

The defendants claim to have believed that a reading of a court injunction was necessary before they were required to leave. This mistakenly assumes that the campus policy on disruptions is unenforceable unless supported by an injunction from a public court. It is not clear whether the refusal to leave even after being declared a disruption was a mistake in understanding of the policy or whether the refusal was motivated by a disregard of any consequences lighter than possible action in an outside court. But even if one believes that the defendants sincerely believed that a state court injunction had to be read before a campus policy could be enforced, such a mistake of law is not a sufficient defense.

SJC Case 37 - Alleged Disruption of Academic Council Meeting of April 3

Concurring opinion of G.F. Franklin

There is a conflict in this case between the statements of the defendants and our finding. In direct testimony of one defendant and in several other parts of the testimony before us there is evidence that the group planned to leave before ... something. They said they did not plan to disrupt. They said that they would leave when the "document" was read. The facts show that shortly after Mr. DeYoung completed reading the court injunction there was silence and Mr. Pitzer acknowledged that most of the unauthorized people had left. Thus it would appear that this group carefully planned not to disrupt and left when given a clear charge that they were doing so.

The issue, then, is who sets the guide lines of a disruption. The council must apply a rule of reasonableness within the guide lines of the University function claiming to be disrupted. The noise level required to disrupt a Chamber Music Concert is entirely different from that required to disrupt a Basketball game. One of the faculty witnesses asserted that no human discourse could possibly disrupt his class; other colleagues might feel differently. In the case at hand, the University function was a meeting of the Academic Council and the standard must be a reasonable meeting of that body.

Applying this standard to the facts before us, I find that, despite their intent not to "disrupt", these defendants in fact did so by interruption and noise and by not leaving when asked to do so by the presiding officer. The request to leave is clear and unmistakable; that those accused remained after this request is equally clear from the photographic evidence. It might be possible that by reasonable standards of a meeting of the "Movement" there was no disruption but that is not the standard here; by reasonable standards of a meeting of the Academic Council there was a disruption. It started when unauthorized persons prevented President Pitzer from starting the meeting despite being asked to leave. It continued until the teaching assistants had finally departed.

Because of the intent of the group not to disrupt and the fact that they left when the threat was clear to them, the seriousness of this case is not great. The light penalty is a reflection of this perception.

Gene F. Franklin

June 4, 1970

Opinion, Case 37.
Leonard M. Horowitz

Did the defendants violate the policy on campus disruption in Case 37? According to the policy, it is a violation "to disrupt the effective carrying out of a University function." The phrase "effective carrying out" really seems superfluous to me, so for me the basic question is whether the Academic Council meeting was disrupted. In deciding, I found myself relying on an intuitive feeling about the atmosphere of the meeting. The laughter, noise, ridicule, hooting, shouting, and general commotion were clear on the tape. Intuitively, then, the meeting did seem to be disrupted.

Apparently, some more formal proof of disruption is needed. I think the most compelling proof would have been a poll of all authorized persons attending the meeting. If these individuals generally agreed that their meeting was disrupted, then the disruption would be unequivocal. From the tape, it seemed that a significant number of Academic Council members did consider the intrusion to be disruptive. At one point the President stated "I will have to declare that there is a disruption of the meeting and that you are in violation of the University policy on disruptions," and at least moderate applause followed. Perhaps in the near future, intrusions will become a standard form of acceptable protest which Academic Council members do not consider disruptive. At the present, though, I think the protesters' presence was resented, and to that extent, the Academic Council's right to a closed meeting was denied.

A few psychological comments. Other technical questions have been discussed by the SJC--e.g., misunderstandings of the phrase "Academic Council," possible misunderstandings about the legality of brief, non-violent disruptions, and so on. The results of these discussions will certainly appear in other opinions. Therefore, I thought I would not discuss those points here, but instead, would direct my remarks to a few psychological points about the defendants' behavior during the trial. From these points we might better understand their intent on April 3rd.

It has been possible to learn about the defendants by watching their behavior during the trial. During the trial they exhibited a certain amount of hostility towards the witnesses. Their questions were often angry, impulsive, and repetitious. Many of their comments were irrelevant, and much of their behavior was boisterous, self-centered, and immature.

First--and this comment is probably the least important--the defendants were under considerable stress. As the prosecuter's case sharpened, they may have grown increasingly anxious. One result of anxiety is that the person acts less mature. This immaturity seemed to get strengthened and encouraged by a strong group feeling within "The Movement." The defendants often seemed to be striving for each other's approval and esteem. Their laughter was sometimes forced and inappropriately hearty. At times they almost compulsively ridiculed and laughed at witnesses, perhaps to win the group's approval and to re-affirm their own strong ties to the group.

A second point concerns the psychology of individuals who participate in extreme movements, in whatever direction. Empirical data have shown that such individuals tend to be rigid in their perceptions. For example, consider one investigation of individuals of this type: A line drawing was shown which depicted some object A. Then in successive drawings, A progressively got transformed into B. The investigator determined the point where the subject began calling the drawing B instead of A. Individuals with extreme views tend to persist longer in perceiving A, compared to other randomly-drawn individuals. They also tend to divide the world more sharply into the good and the bad, the right and the wrong. During the trial, it was clear that the defendants tended to divide people in the courtroom into the good guys and the bad guys, with few intermediate shades of gray. This same world view must have influenced their approach to the Academic Council meeting. Their view can scarcely be called objective, so courteous deliberation and a fair-minded exchange of ideas do not seem to have been the goal on April 3rd.

Finally, the defendants consisted of a disproportionate number of angry, volatile, anti-social individuals. While some of the defendants were admirably mature and idealistic, there was a disproportionate number whose behavior was striking for its generalized and non-directed agressiveness. One defendant proclaimed with practically a religious fanaticism, "We are enemies of the state!" "I am a revolutionary!" This aggressive energy seems diffuse, and for them many issues of life seem to get projected onto a dimension of aggressiveness; therefore, a significant number of defendants probably approached the April 3rd meeting with an aggressive, hostile intent. Their frame of mind again emphasizes the group's non-objectivity, and its probable intent to disrupt. Furthermore, no real evidence seems to exist that the defendants tried in a sincere way to get some articulate spokesman invited to the meeting. This neglect further suggests a hostile, disruptive intent instead of simply an assertive act of basic good-will.

SEPARATE OPINION OF H. RENTON ROLPH

I find that the defendants in this case participated in a disruption of the Academic Council meeting of April 3, 1970 within the meaning of the Policy on Campus Disruptions.

Was There a Disruption?

The tape-recording of the meeting shows that the President tried to open the meeting, according to his testimony, soon after his arrival. He informed those present that the meeting was a closed one of the Academic Council. He then asked all those who were present and uninvited to leave.

Finding: The uninvited did not comply. In my mind, this act, though discourteous, did not mark the beginning of the disruption because the students, I feel, were waiting for a formal and authoritative declaration of disruption. According to testimony, there had been a meeting on the afternoon of April 3 on what Defense Attorney Hartog appropriately labelled Agitator's Grass near Tresidder at which the group decided to attend, but not disrupt, the Council meeting. We cannot reasonably require the defendants to have known the relevant detail of Case 4 (Trustee Luncheon) which specified the hit-and-run type of disruption. Also, the disruption in this case is neither active as the one in Case 4 nor passive as a sit-in. Furthermore, one of the group's legal advisers on April 3 (their attorney in this case) refuses to accept both the reasoning of Case 4 and its possible precedential effect on this Council. Instead, I assume that on April 3 there was a general understanding in the radical student community that a formal declaration of disruption--not necessarily, though preferably the reading of the Policy itself--would mark the beginning of any disruption in this situation to be used by the University as a basis for prosecution. Those remaining after this demarcation point in time would be in clear and willful violation.

After the President indicated that unless the students left there would be a formal disruption and after they did not leave, the disruption began. Although the students started to leave at the reading of the injunction--which might indicate they were waiting for the actual reading of some statement of policy--they nevertheless violated the Policy by not leaving at the time of the President's request and warning.

Did the Faculty Disrupt By Applauding?

Defense argued that the faculty applause contributed to and may have constituted a disruption. While no man can deny the members of a meeting the right to applaud at their own meeting, the fact that they chose to do so may have aggravated the situation. Had silence followed the President's request and warning, the students may have departed at that point, not without a few catcalls to be sure. The applause invited a student response and prolonged the, by then, on-going disruption.

The applause also served to distinguish the meetings of April 3 and May 1 of this year. By their applause the faculty on April 3 indicated their strong desire not to listen to the students. On May 1, however, another group of students interrupted the middle of the Council meeting but the faculty decided to listen to them on that date. The point here is that the assembled faculty do have sovereignty in this matter and may express themselves as to their preference quite clearly. Because of the May 1 precedent, it would be reasonable for any group of students, to come to future Council meetings in order to petition for a hearing.

SEPARATE OPINION OF JOHN J. SCHWARTZ

In 1969 the council held (Case #4) that persons could be in violation of paragraph one of the campus policy against disruption without being in violation of paragraph two of that policy. Thus, the notification requirements in paragraph two did not always need to be present in order for a violation of the policy to occur. That decision is reaffirmed in the present case. Thus, when the defendants, knowing their presence was unauthorized, remained in the Physics Lecture Hall creating the disorderly, antagonistic atmosphere after being requested to leave they "prevented" and "disrupted the effective carrying out of a University function," and of an "approved activity." The defendants therefore violated paragraph one of the policy on campus disruption.

It is also found that the defendants violated paragraph one and perhaps even two of the policy on campus disruption when they did not leave after being told by President Pitzer that if they did not leave they would be in violation of the University Policy against disruption. There is no requirement under paragraph two of this policy that the policy be read to the defendants before or after they are requested to leave.

On the matter of penalty the prosecution has recommended a fine of $100 plus one year probation and a letter of censure for first offenders; a fine of $100, suspension for two quarters and a letter of censure for second offenders; and expulsion for third offenders. These recommendations are deemed excessive in view of a) the lack of intent to "disrupt;" b) the misunderstanding that there would be no violation of the disruption policy if the defendants left immediately following a reading of the policy or the injunction, and c) the short duration of the disruption. Accordingly a fine of $25 is recommended for first offenders, $75 for persons guilty of a second offense, and $150 for persons guilty of a third offense.

J. J. Schwartz

SJC Case No. 37 (1970)
Lynn Karowsky
-- concur on guilt
-- dissent on penalty

OPINION

Was there a disruption as defined by the "Campus Policy on Disruption" on April 3, 1970? This seemingly simple problem is a composite of implicit complex problems: a disruption as perceived by whom, under whose standards, and was the declaration reasonable under those standards? I concur in the finding of a disruption of the Academic Council meeting on April 3, 1970 and on the guilt of the defendants, but for different reasons than my colleagues.

The outlines of a disruption are set forth in the "Policy on Campus Disruptions" issued October 7, 1968, and interpreted by the SJC in cases #4 and #13 of 1968. Nowhere in either the policy itself or in the two defining opinions is there a discussion of the criteria for a disruption or the standards to be used. The declaration is purely discretionary, and therefore dependent upon the values of the individual organizations or its members. This case centers around differing standards and differing perceptions of those standards.

Case #4 implicitly discusses the matter of standards when it discusses differing types of disruptions and the subsequent need for notice. Case #4 separates paragraph one and two of the Policy and thus defines two types of disruptions -- (1) the continuing, on-going, or static disruption, and (2) the "hit and run" disruption. In the former situation, eg. a sit-in, the event initially may not be considered a disruption. However, it may become a disruption at the point when it is perceived as a "claar and present danger". The point where such a demonstration becomes a disruption is purely discretionary by the values of those in control. The original perception has changed, and notice of the altered status must now be given to the participants.

The "hit and run" situation initially violates the standards of "the dignity and seriousness" of University activities by all concerned, and, therefore, no notice is required.

Implicit in this discussion are two sets of standards and perceptions -- one held by the "disruptors" and one by those being "disrupted". This case discusses whose values will be germane to the declaration of a disruption.

The instant case presents an ambigous situation containing elements of both a static and a "hit and run" demonstration. President Pitzer stated in testimony "Just their mere presence was a disruption" in that an Academic Council meeting will not start with unauthorized persons present, implying "hit and run"; the President later stated that "their presence alone after the warning was a disruption in itself," indicating an awareness of a difference between his and the demonstrators' perceptions.

The basis of the defense, however, focuses directly on this difference. The defendants also perceive their actions differently from the President. The President testified that even if he did not declare a disruption did exist. While the rule may be true, its inverse may not - if a body considers itself disrupted and its standards violated, then a disruption does exist for it, regardless of how perceived by those disrupting. Each body has a right to establish and alter its own agenda, and conduct itself in a style of its own choosing. Individuals have the right to petition an alteration in that agenda. However, when the petitioners knowingly violate the standards of accepted action and the right of the body to establish its own agenda, they must be willing to accept the consequences.

The details of the event are outlined in the general opinion. I would like to offer my analysis, as gleaned from the testimony and evidence.

The protesting group with the defendants included entered the tank about 4:00 after a meeting in White Plaza where they publicly decided not to disrupt the meeting, and were notified at the door that the Academic Council was a closed meeting for faculty and University staff only. The defendants entered the building and occupied the seats while speakers went to the podium to notify the faculty already present that they did not intend to disrupt the meeting. When President Pitzer entered the tank he knew unauthorized persons were present, but he did not know of their explicit intentions. He was, perhaps, predisposed to believe they were there to disrupt, if necessary, in order that their demands might be met. As indicated in the transcript, his first words were to the closed nature of the meeting. The interjections from parts of the unauthorized group were answered by the "sshs" from others. As implied on page 5 of the "General Opinion," the behavior "appears to have been an effort to petition the Academic Council to discuss the subject of ROTC on campus at this meeting..." The students were asked to leave before being permitted to present their petition. Surely at this point no violation could be declared, for the President had asked them to leave without hearing their request - the students hoping to change his mind by their subsequent discussion. Feeling thwarted in their legitimate petitioning attempts, the subject of their immediate inquiry was their presence rather than their cause, as is often the case in protests where discussion transfers from cause to tactics.

The President's response showed little tolerance by responding only that the rules were set and other forms were available. Honest requests to alter those rules for the present circumstances were ignored. The President continued in a non-substantive manner not truely indicating the reasoning behind the "closed meeting" rule, further thwarting the attempts of the students to communicate. Now thoroughly frustrated in (1) attempts to bring their issues to

the Council floor, and (2) to understnad the reason for the complete thwarting of (1), and the reason for their immediate exclusion, the students reacted in what was considered a "disruption" to the President's warning and the apparent faculty concurrence.

I concur with the President's subsequent declaration that a disruption did exist for the Council at that place and time and with their frame of mind and values. As stated previously in this opinion it is the right of every body to set its own agenda and meet in own style. If a body feels these rights infringed upon, it truly is being disrupted - whether it should reasonably feel so or not.

I am convinced both from the testimony of participants and evidence presented, that the defendants did not, in fact, intend to disrupt. In this case, intent is mitigation of guilt, not grounds for acquittal. If they were that intent upon not disrupting, once the warning had been given (whether or not the decision was fair in their perceptions, and whether or not they felt thwarted), they should have left the meeting. Defendant Jeff Youddaman seemed to recognize, unknowingly, the right of the body to use its own standards when he stated in his opening argument, "If someone came to me in my class while I am speaking on American literature in 1920 and asks me about ROTC, I answer."

The students should have been especially perceptive of the feelings of the Council after explicitly debating and deciding the point prior to entering the tank. Those individuals stating that they would not have gone in if they thought their actions would result in a disruption, should have been acutely aware, if not paranoic, of the tenor of the meeting.

However, as stated previously, the faculty and President are not free from blame. At best, it appears that a lack of tolerance and an over-reaction by both were partly responsible for the students' actions. We need not speculate too greatly to discover what would have happened if the President and faculty had responded differently. The May 1 "interruption" of the Academic Council by the international students petitioning for the release of Bijay Sharma provided such an example. The tension during that week had been high as well, following the most violent activities on campus in its history. The students entered, but silently (a point to be discussed subsequently), while the meeting was in progress. They were immediately asked to leave, but one person addressed the Council and was allowed to speak, perhaps avoiding an incident similar to this case. Perhaps the faculty learned from their own mistakes of less than a month before, and understood that it is more expedient to hear the petitioners out rather than thwart their attempts to speak.

The defendants here raised the argument of the "political" nature of this trial. The only distinction the defendants made

between April 3 and May 1 was the substance of their demands -- April 3 being political in nature and May 3 being racial. They felt, perhaps due to their own paranoia, the political repression of selective prosecution, the faculty and administration disagreeing with their views were thus less tolerant of them. Perhaps there is an element of validity in their comments, for a group can hear what it wants and exclude what it does not want. However, the petition process should not be a trial-by-ordeal procedure -- if the petition is successful, the matter is discussed; if the petition fails, or if the powers that be prevent the petition from being heard, then the petitioners will be convicted of a disruption.

There is one other distinction, however, which the defendants did not draw, between April 3 and May 1 -- the style and manner of communication, protest and petition. From the testimony, tape and presentation of the defendants at the hearing, the April 3 group seemed raucous, self-righteous, egotistical, and intolerant itself. The May 1 group was apparently silent, but determined. Perhaps the difference can be typified by the symbols of protest used -- the foreign students carried a placard, the April 3 group a papier-mâche pig's head. One style may be acceptable and compatible with the decorum of the Council and one may offend and disturb its members. One of the witnesses for the defense testified that defendants' actions at the Academic Council meeting were in no way different from their participation in their own meetings. I feel compelled to repeat that every body has the right to set its own acceptable decorum; what may be acceptable in a meeting of the "Movement" may not be to the Academic Council. The intolerance and "over-reaction" previously ascribed to the President and faculty may well have been caused by the students' manner of presentation, and may well be the difference between April 3 and May 1.

For a group so desperately concerned with persuasion and the communication of social concepts and ideas, it should look beyond its own paranoia, culture-bound vocabulary, and self-gratifying demonstrations. To influence and persuade they must address each individual at his own level and in his own style. The comments in Professor Horowitz's opinion regarding the defendants' behavior at the hearing are most pertinent. I suggest the defendants seriously re-examine the efficacy of their fetish for self-righteous, self-satisfied and defamatory rhetoric; that they drop the defenses caused by extreme paranoia, and really address themselves to the true and valuable issues and goals of their cause.

I dissent as to penalty, for I feel: (1) a fine is totally inappropriate in this case; (2) the defendants' motivation is highly mitigating; (3) the defendants' intent not to disrupt is mitigating; and (4) the lack of tolerance on the part of the President and the faculty which may have incited this situation, is mitigating.