Discipline Committee Report on ROTC

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strategies into a test of administrativeness. It is the only test therapeutically limited the depth of our concern in this connection. The Administration. it required Vice President Simonson, to cite an example of the decisions. I believe as a result of his testimony, to urge one demonstration. His testimony on interdicted premises on pain of disciplinary action, even though that demonstration was successful, is a conciliatory and calming role. Mr. Simonson concludes that it never occurred to him to talk to that particular young man to try to persuade him to stop, to explain to him what he was being accused of. Finally we were very troubled by the fact that the charges were against a large number of other individuals. We wrestled at length with the thought that if the individual is brought before us on a trespass charge, we might, in the course of our inquiry, discover circumstances surrounding that incident and the charges which may tend to increase the seriousness of his offense in our eyes. We made it clear that penalties might be more severe than those associated with the individual case, or, in other words, the penalties might be at least nominally applied. The validity of our concern in this connection was confirmed by the statement contained in the administrative conclusions. In filing these charges, we have not attempted to discriminate between the degree of the accused's involvement. Rather we have thoughtfully exercised this form of judicial review, we have filed charges against all of those unautho- rized persons whom we were able to identify as being present at this trespass. The trespass was declared (1:35 p.m., May 12, 1972) after it was given to the Discipli- ne Committee and the charge in the determination of the range of judgements permitted in the case (emphases added) of the indi- viduals charged.\(^1\)

The attempt to create a situation in which an area inter- dicted by a rule of the Institute is trespass is a judicial fire-free zone. Any individu- al who has been shown to have been in the area becomes subject to a summary trial and examination of his entire conduct while there. He may then find himself, through an interdicted charge, effectively being tried and convicted for quite other offenses. He will certainly then have been denied the ele- ment of fair trial in the charges against him before being brought to trial. In this we cannot cooperate. Note that we do not assert that the charge of trespass is vague. It is quite specific. We note only that if the accused feels the accused to have violated the rights of the Institute community beyond merely trespassing on interdicted ground, he should have so charged and we would have adjudicated accordingly.

3. This Decision as Precedent

A superficial reading of our decision and of our opinion may mislead the reader to believe that we have sanitized trespass as a chargeable offense. We have not set aside doubt surrounding the validity of that charge, a doubt cast on it when it is applied to many members of a group engaged in a unified action. We have, however, found that the charge of trespass must be adjudicated, as must all charges, in the light of the context in which the offending action is alleged to have been carried out. In so finding, we believe that we have not in its slightest degree rendered the threat of disciplinary action following a declaration of introduction of an area of the Institute less credible than it has been hitherto. Nor do we in any way diminish the authority of the Institute Ad- ministration to take such, or any other, legal declaration. We adjudicated a specific case sur- rounded by circumstances specific to it.

We wish to make it special attention here to the fact that we do not believe this case to involve any attack on academic freedom. Hence our present decision can not form a precedent to any case in which a violation of academic freedom is an important ingredient. We single out academic freedom as an issue because trespassing may be, under certain circumstances, an attack on academic freedom. We certainly do not wish to imply, nor do we say, that only offenses that tend to attack academic freedom are chargeable before the Dis- cipline Committee. Nothing done or said here can be interpreted as diminishing in any way the Rogers Report as one of the bases of the Institute's common law.

Finally, our insistence that individuals brought before us be tried only for offenses which they are actually charged with committing, appears to us necessary as a judicial restraint that has wrongly and harmfully crept into the Committee's procedures. We hope this report to be permanent.

References and Notes

1) Wadleigh, K.R., MEMO to Dr. W. Lewis Powell of the United States Supreme Court, in his opinion a recent writetup case, wrote: "Given the difficulty of defin- ing the domestic security interest, the action, action in acting to protect that inter- est becomes uncertain. Sena- tor Hart addressed this di- lemma in the floor debate: "As I read it—and this is my four—we are saying that the government is more severe than the speci- fic. We note only that if the accused feels the accused to have violated the rights of the Institute community beyond merely trespassing on interdicted ground, he should have so charged and we would have adjudicated accordingly.

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