

FILED
DEC 14 2007

ALEX GALVO, CLERK
BY DEBORAH ROJAS
DEPUTY, SANTA CRUZ COUNTY

1 Dennis P. Howell, SBN 78806
2 Rebecca Connolly, SBN 145482
3 GRUNSKY, EBÉY, FARRAR & HOWELL
4 A Professional Corporation
5 240 Westgate Drive
6 Watsonville, CA 95076
7 Telephone (831) 722-2444
8 Facsimile (831) 722-6153

9 Attorneys for Plaintiff, The Regents of the
10 University of California
11 [EXEMPT FROM FEES - GOV. CODE, § 6103]

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CRUZ

14 THE REGENTS OF THE UNIVERSITY OF
15 CALIFORNIA,

16 Plaintiff,

17 v.

18 CHRISTOPHER DAVID BENTEROU,
19 JENNIFER CHARLES, RYAN JOSHUA
20 COMINI, CRUZ ADAM MOLINA,
21 NICHOLAS MICHAEL VARANELLI,
22 ROBIN MICHAEL WOOLNER and DOES
23 1-50,

24 Defendants.

No.

W 158919

DECLARATION OF FELICIA E.
MCGINTY IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION

Date: January 11, 2008

Time: 8:30 a.m.

Dept.:

25 I, Felicia E. McGinty, declare:

26 1. I am the Vice Chancellor for Student Affairs at the University of California, Santa
27 Cruz. I have served in this capacity since September 1, 2007. I have worked in Student Affairs on
28 university campuses for 19 years serving in the following capacities: Assistant Director of Student
Services, Director of New Student Experience, Assistant Vice President for Student Affairs and
Associate Vice President for Student Engagement. Except as qualified, I have personal knowledge of
all of the matters stated herein, and, if called as a witness in this action, I could and would
competently testify to those matters.

1 2. As the Vice Chancellor for Student Affairs, one of my primary responsibilities is to
2 enhance the student experience and support learning outside the classroom. In support of the
3 university's educational mission, my staff and I make contact with students who are planning protests,
4 rallies, demonstrations, and such actions that are governed by our campus Time, Place and Manner
5 policies under the Student Code of Conduct. Attached hereto as **Exhibit "A"** is a true and correct of
6 these policies that can also be found on our web site at <http://www2.ucsc.edu/judicial/handbook.shtml>.

7 3. On November 2, a flyer was received from a staff member that indicated that there
8 would be a rally on November 7 against the Long Range Development Plan. On Friday, November
9 2, 2007, Assistant Vice Chancellor/ Dean of Students Alma Sifuentes wrote to the LRDP Resistance
10 Group, offering assistance with reserving the Quarry Plaza, amplified sound, tabling, etc., and also
11 reminding the group about Time, Place and Manner policies. The group responded on November 3rd:
12 "Thank you for your concern. The rally will be occurring on November 7th, from 11am - 1pm in the
13 Quarry Plaza. The rally is an open gathering and welcomes the presence of other student groups.
14 Thank you in advance for respecting our constitutionally protected rights to free speech and
15 assembly."

16 4. At 11:00 a.m. on November 7th, Student Affairs staff began interacting with protestors
17 who were gathering in the Quarry Plaza. Staff distributed the Use of University Property and Free
18 Speech brochure. Don Williams, who oversees Quarry Plaza reservations for tabling and requests for
19 amplified sound, came out to the Quarry. No reservations or requests had been made regarding the
20 protest.

21 5. At approximately 12:00 noon, the group left the Quarry Plaza and marched down
22 Hagar Court to McLaughlin. The group then reformed when they arrived at Parking Lot 121. From
23 the very beginning, the activity on Parking Lot 121 created cause for concern due to the fact that laws
24 were being broken, the Student Code of Conduct rules were being violated and the environment has
25 become unsafe.

26 6. Specifically, the protestors willfully disregarded direct orders from the police to not
27 enter the area that had been barricaded and over took the lot. Following that, the crowd began
28

1 provisioning the people in the trees with food and water and many of the protesters began smoking
2 marijuana.

3 7. Since Nov. 7th, Parking Lot 121 has been occupied. What began as a group of
4 individuals standing around for a few hours has turned into an encampment, replete with structures,
5 constructs, signage, artwork, raised gardening beds, stolen university property (i.e. picnic tables from
6 other parts of the campus have been chained, pad locked and placed on the site), boulders and other
7 size rocks have been removed from the surrounding area and used to barricade parking spaces,
8 including the handicap spaces. The site is dirty, smelly and strewn with trash. Holes have been
9 drilled into the asphalt of the lot and saplings have been planted. At times there have been open flames
10 from lit candles, which the group has refused to extinguish when asked. There are open containers of
11 food, garbage is being collected for composting and human waste and bottles of urine have been
12 found in the area.

13 8. Students, faculty and staff have reported concerns about their personal safety. Visitors
14 and passersby have had intense confrontations with the protesters/squatters, who are often wearing
15 masks and are intimidating to those who disagree with their cause or methods. Recently, it was
16 reported that a squatter threatened to "bash" a person's face with a bicycle lock. Concerns are
17 growing among all constituent groups and the situation has become untenable.

18 9. My staff and I visit the site almost daily and have witnessed first hand the aggressive
19 behavior of those involved. Outsiders (including university officials) are usually accosted by these
20 masked individuals and questioned about why they are present on the site. At times, I have had
21 concerns about my own personal safety or the safety of my staff. As a result, we continue to visit the
22 site twice daily, but are now grouped in pairs. Each day we attempt to discuss the health and safety
23 concerns that the encampment is creating, as well as address the Student Code of Conduct rules
24 violations.

25 10. More recently, our concerns have been heightened by the fact that many of the people
26 on the ground are not students and the number of confrontations with non-supporters is increasing.
27 Faculty, staff and students report feeling unsafe walking in that area, especially after dark. The
28

1 structures erected pose particular concerns about the likelihood of sexual assault for women walking
2 alone after dark.

3 11. Additionally, the people who work in the area near by building have not been able to
4 park in the lot. To avoid continued vandalism and loitering the Physical and Biological Sciences
5 building has been on lock down, making it difficult for students to access professors and for all who
6 have a legitimate business interest in visiting that facility.

7 12. It is unknown whether or not the squatters have weapons; however, I have witnessed
8 saws and seen them cutting things, presumably with pocket knives, none of which are allowed on
9 campus. While visiting the site this morning I witnessed a rusted blade from a saw lying on the
10 ground, despite my request to have it discarded, the blade remained on site.

11 13. The situation has spun out of control and poses significant health and safety risks to our
12 campus. Not to mention the fact the people in the trees routinely send things up and down from the
13 trees and could easily target people on the ground if they intended to cause bodily harm to those
14 passing by the area.

15 I declare under penalty of perjury under the laws of the State of California that the forgoing is
16 true and correct.

17 Executed on December 13, 2007 in Santa Cruz, California

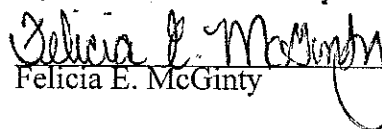
18 
19 Felicia E. McGinty

EXHIBIT A

**POLICIES -
CONTINUED**

40.41: For the purpose of these regulations, "grounds open to the public generally" are defined as the outdoor areas of the campus (e.g., lawns, patios, plazas) that are at least 10 feet from the entrances/exits of campus buildings and parking lots, and that are also a safe distance from the curbing of campus roads. Outdoor recreational areas (e.g., playing fields, courts, swimming pools) and grounds adjacent to designated "private residences" (e.g., Faculty/Staff Housing, residences of the chancellor and college provosts) are excluded from this definition. All activity in open areas must be conducted in such a way that vehicular and pedestrian traffic is not impeded and normal instructional, research, and administrative activities are not disrupted. Tables (excludes commercial activity Section 42.32) may not be placed in areas where direct passage to or through any entrances, exits, sidewalks, or walkways are blocked. Tables may be no larger than three feet by six feet and may not extend beyond three feet of the perimeter of the table. (Additional safety restrictions may pertain to activities at or near the Quarry Plaza parking lot or campus entries.)

42.23 Non-university organizations and individuals may post and distribute materials only on bulletin boards designated for public use, outdoor kiosks, and the interior of bus shelters. These areas will be cleared of all materials on a regular basis.

42.24 d Commercial and non-commercial posters and announcements may be placed on public access bulletin boards not designated for specific use. All posted materials must clearly indicate the name of the person(s), group(s), university unit(s), or campus organization(s) responsible for posting them and the day by which they are to be removed. Posters shall not exceed 17" X 22" (or equivalent area)

102.08 Conduct, which constitutes: b. threats of violence; c. a threat to the health or safety of any person.

102.13 Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other university activities.

102.14 Disorderly or lewd conduct.

102.15 Participation in a disturbance of the peace or unlawful assembly:

102.16 Failure to identify oneself to, or comply with directions of, a university official or other public official acting in the performance of their duties while on university property or at official university functions, or resisting or obstructing such university or other public officials in the performance of or the attempt to perform their duties.

102.17 Unlawful manufacture, distribution, dispensing, possession, use, or sale of, or the attempted manufacture, distribution, dispensing, or sale of controlled substances, identified in federal or state laws or regulations which include: a. opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana (medicinal marijuana is not allowed, nor is it a defense to a violation of any university policy or campus rule); synthetic narcotics (Demerol, methadone); and dangerous nonnarcotic drugs (barbiturates, Benzadrine); or b. all other drugs not included in (102.17a).

102.27 b Camping is prohibited on university owned, controlled or leased property. Camping is defined as any of the following: the establishment of temporary or permanent living quarters in other than residence halls, apartments, or other University managed housing; sleeping outdoors with or without bedding, tent, hammock, or similar protection or equipment; sleeping in or under any parked vehicle, or establishing or maintaining outdoors, or in or under any structure not intended for human occupancy, at any time during the day or night, a temporary or permanent place for cooking or sleeping by setting up any bedding, sleeping bag, blanket, mattress, tent, hammock or other sleeping equipment, or by setting up any cooking equipment.

102.3 Violation of any college rule, policy or regulation

102.34 Guest Responsibility. Students are responsible for policy violations committed by their student and non-student guests while on university owned, leased or controlled property, at official university functions, or at organizational events on or off campus.

**INFORMATION
FROM
STUDENT
AFFAIRS
TO
PROTESTORS
ON SCIENCE
HILL**

**ACCESS THE COMPLETE
STUDENT POLICIES AND
REGULATIONS HANDBOOK:
HTTP://WWW2.UCSC.EDU/
JUDICIAL/HANDBOOK07-08/
HANDBOOK_07.PDF**

**FOR MORE INFORMATION:
DEAN OF STUDENTS
WWW.CAMPUSLIFE.UCSC.EDU
831.459.4446**

“Students are members of both society and the university community, with attendant rights and responsibilities. Students are expected to comply with all laws and with university policies and campus regulations.” —UCSC Student Code of Conduct

UCSC is a community which requires the free and open exchange of ideas and the widest possible range of opportunity in the pursuit of knowledge in order to thrive. Every member of the University shares in the responsibility for maintaining this unique community so that the University's mission of teaching, research, and public service can be achieved.

To assist you in making informed choices: Throughout the duration of the protest on Science Hill, Student Affairs personnel will continue to visit the site to check in with students. We would like to hear from you, including who you are, how you are doing, and what your concerns and issues are, so that we may be able to assist with resolution, while ensuring that the campus community can continue its operational activities related to the academic mission of the University. Student Affairs staff will also be noting policy violations, in accordance with the UCSC Student Policies and Regulations Handbook. You should know that your participation in these policy violations may result in disciplinary sanctions, as per the Student Policies and Regulations Handbook.

In the spirit of communication, we provide the following list of policy violations which have already been observed by those engaged in the protest on Science Hill:

30.30 The time, place, and manner of exercising the constitutionally protected rights of free expression, speech, assembly, and worship are subject to campus regulations that shall provide for non-interference with university functions and reasonable protection to persons against practices that would make them involuntary audiences or place them in reasonable fear, as determined by the university, for their personal safety.

30.31 Signs, posters, banners, and picket signs may not be hung or placed on University property without prior written approval. All signage removal is the responsibility of the sponsoring organization and is to be removed immediately after the event (See Section 30.34f). Temporary structures may not be constructed or placed on university property without the approval of the assistant vice chancellor, dean of students or designee (see also Sections 30.34f and 30.34g)

30.34 Outdoor displays, including signs, banners, and exhibits must be sponsored by a registered campus organization, a student, or a faculty or staff member. The following locations are designated areas for outdoor displays: a. specific areas adjacent in the Quarry Plaza designated by the Quarry Plaza Council. Contact the Quarry Plaza special events coordinator; b. locations within the boundaries of each of the colleges as designated by the college administrative officer at each college.

40.10 University properties shall be used only in accordance with federal, state, and local laws and shall not be used for the purpose of organizing or carrying out unlawful activity.

40.11 University properties shall be used in accordance with university policies and campus regulations, and with the procedures, which implement these policies, and regulations.

40.12 After 8:00 p.m. and before 7:00 a.m., university properties, including buildings and real property, are not open to the public generally, except for members of the public who are attending events open to the public during those hours, or who are invited guests of university students, faculty, or staff.

40.13 Campus units, other official university units, registered campus organizations (students, faculty and/or staff) may use university properties in accordance with the following: e) In order to secure properties and ensure the safety of students and others, evening events on campus must end no later than 11:00 p.m. on weeknights and 1:00 a.m. on Friday and Saturday nights. Exceptions to this policy must be approved by the appropriate facility manager.

40.14 Events involving use of university properties by organizations other than registered campus organizations or campus units must be officially co-sponsored by a campus unit or registered campus organization, in accordance with the provisions of university policies and campus regulations and procedures. a. The co-sponsor relationship between a campus unit or a registered campus organization and a non-affiliated organization or person must be approved in advance by the appropriate senior administrative officer: the executive vice chancellor; the vice chancellor, Business and Administrative Services; the vice chancellor, Student Affairs; the vice chancellor, Planning and Budget; vice chancellor, University Relations; deans; or the assistant chancellor. e. Promotional literature and other forms of publicity must clearly state the name of the co-sponsoring campus unit or registered campus organization.

40.20 All persons on university property are required to abide by university policies and campus regulations and shall identify themselves upon request to university officials acting in the performance of their duties. Violation of university policies or campus regulations may subject a person to possible legal penalties; if the person is a student, faculty member, or staff member of the university, that person may also be subject to disciplinary action in accordance with university policies and campus implementing regulations.

40.30 All use of university properties and services must conform to applicable campus time, place, and manner regulations.

40.40 On university grounds open to the public generally, as may be described in campus regulations, all persons may exercise the constitutionally protected rights of free expression, speech, assembly, worship (including the distribution or sale of noncommercial literature incidental to the exercise of these freedoms). Such activities shall not interfere with the orderly operation of the campus and must be conducted in accordance with campus time, place, and manner regulations.