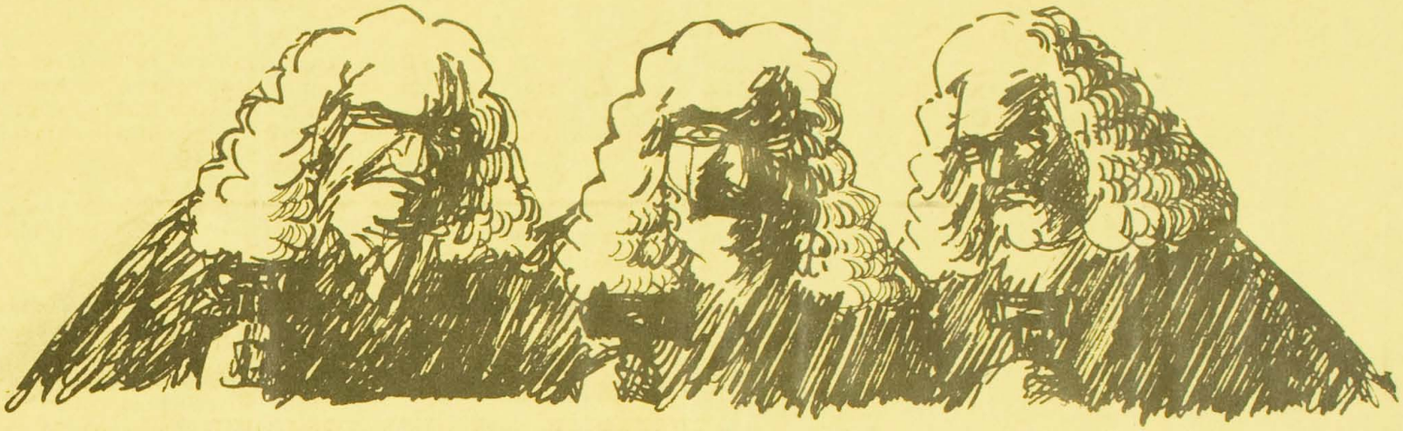
THE TRIAL



This week you will be sentenced as criminals. You willfully trespassed upon the domain of arbitrary authority; you resisted, obstructed and delayed officials in the performance of duplicity. It is for this that you will be punished.

In fact you have already been punished for your crime. Throughout the Spring semester, the aggrieved parties of December Second have been taking their revenge upon you in many small ways. They deliberately slandered you by coining the phrase "Filthy Speech Movement"; they disenfranchised you by denying graduate students the right to participate in the ASUC; they sabotaged your education by insisting upon the quarter system; they even robbed you by raising dormitory rents.

All that time they were afraid of you. They nipped at your flanks, but they still preferred to back away rather than risk a real fight. They remember December Second. On December Second you not only preserved the right of Berkeley students to speak and organize freely; you extended that right to students throughout the nation by encouraging them to stand up for their rights.

But the domain of arbitrary authority is still intact and officials are still active in the performance of duplicity. The Vietnam teach-in bothered some very important people who may try to prohibit the next one. The legislature may chop away at the graduate student body by slashing tuition waivers and assistantships. More students may be suspended or expelled as an offering to outside powers. And the really free university still lies far ahead.

Whatever the course of events, the masters of Sproul Hall will be chastened by the thought of what you did. However much they may celebrate this week---the saturnalia of "law and order"--they are haunted by the memory of December Second.

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The Politics of Justice

by MARVIN GARSON

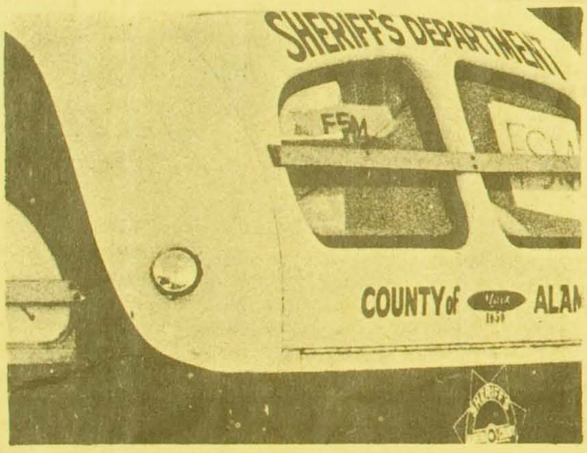
At about the time we were being convicted, Assistant District Attorney Edward Meese was addressing a state convention of DAs in Long Beach. His theme was the proper handling of mass civil disobedience cases, and his proud model was our trial.

None of us is as happy with the trial as Mr. Meese is. None of us would recommend it as a model to the student movement elsewhere. Indeed, many of us by now have the vague feeling that we have been taken for a ride, although we don't know exactly where or by whom.

The state's purpose, in this trial, was to discourage future acts of mass civil disobedience. Our purpose was to tell the story of the Free Speech Movement to a broad public. At this point it looks as if the state has succeeded as much as it could have expected in its purpose, and we not at all in ours.

The state has gotten its convictions with a minimum of expense and embarrassment; we have our story set down in a trial transcript that no one will read except appelate judges who are paid to read it. The sentencing will be no more uniform than if we had had eighty trials; indeed, having a single judge makes it easier for the state to put in jail exactly who it wants and for exactly as long as it thinks effective; Sacramento has the opportunity to deal out what it considers to be the scientifically measured response.

There remains to us the possibility of reversal on appeal---but our chances are less than they might have been if we had had a dozen different "hanging judges" from Anaheim who would have put their prejudices right into the trial transcript.



There was no "winning strategy" we could have adopted; the courts are simply not congenial territory for our kind of fight.

But we did not have to keep silent about what the courts were doing to us. We did not have to pretend those long months that this was an ordinary criminal proceeding.

As a result of our silence, there are many people sympathetic to our cause who cannot understand why we are making such a legal fuss. They believe that it is an open-and-shut case of trespassing; however morally right we may be, we are legally wrong and must be prepared to take the consequences with good grace. Our lengthy defense and our proposed appeal strike them as being a little cry-babyish.

In fact, however, we were not faced with The Law, evenhanded if irrelevant. We went through a classic political trial.

It began with our arrests, which were ordered by the highest political authority in the State, Governor Brown.

The facts are now established beyond controversy. President Kerr and the Regents were opposed to arresting us December 2nd; but the Governor gave the order on the advice of Assistant DA Meese.

We were not arrested by some neutral person or agency dedicated to punishing all violations of law. We were arrested by the governor, an eminently political creature. In making his decision, he had in mind the 1966 elections at least as much as his oath of office.

If we were to be arrested, we had to be charged with something---that is the advantage of living in a democracy.

They decided on sections 602(o) and 409 of the Penal Code. As it happened, section 409 did not apply to us at all and 602(o) (a variety of trespass) was not a very close fit. Section 602(o) was intended to be used against indigents unwilling to leave a public museum or library on a rainy night. It provides that the "regularly employed guard, watchman, or custodian" of the building exercise his discretion in asking the person to leave.

The legislature, when it passed this law in 1963, deliberately wrote it so it would not be used against sit-ins. This does not mean that the legislature is angry at Judge Crittenden for failing its intent; it only means that the laws on the books did not determine our guilt or innocence. We were convicted for violating the prerogatives of power, not the California Penal Code.

After all the rhetoric about "law and order", it would have been terribly embarassing if we had been acquitted---embarassing not only for the Governor and the University Administration, but for every judge and District Attorney in the State.

With a jury we had a modest chance of acquittal---so we could not be allowed a jury trial.

How do you strip a defendant of his sacred right to trial by a jury of his peers? This is how Judge Crittenden did it:

He told us that if we insisted on a jury he would break us up into eighty different trial groups and import nasty reactionary judges from Orange County to try the cases. But if we agreed to waive jury, he would grant us the consolidated trial we wanted.

This position was indefensible. Eighty separate

A Community of Protest

by MICHAEL P. LERNER

In Kafka's great novel, The Trial, the law courts are thoroughly irrelevant to the concerns of ordinary life. The author puts in question the very reality of what happens in those silly rooms. But however ridiculous the proceedings, their consequences are real enough; Kafka's hero is finally abducted by officers of the court and slaughtered like a dog.

Kafka's novel was a prophecy---a prophecy fulfilled in the Stalin purges, the Nazi terror, and in countless obscure places throughout the world. The Sproul Hall trial is a reflection, however pale, of these others. As in Kafka's story, the actual proceedings in court lack the feel of reality. Decisions are made in corridors where defendants can never penetrate. Individuals have been singled out for special punishment---because the powers-that-be believe they are potentially dangerous, or because of acts committed since the crime, or for reasons unknown.

Kafka realized that the notion of justice was totally irrelevant to the process in the law court. The most fundamental data----the reasons why we were morally obliged to break the law, why there was no alternative ---were considered irrelevant to the question of guilt. The man who ordered the arrests----the governor of the state---never appeared to testify. And the accused all acknowledged the facts of the crime, for it was not they but the law that was on trial. Herein lies the absurdity of it all. The law was found wanting, the society immoral---and the accused judged guilty.

You were judged guilty in order to smooth the ruffled conscience of society. You had taken a moral position, but were dealing with men who no longer understood morality and who felt guilty for it. To the conservatives we said: "We take the Bill of Rights seriously", but they didn't understand. To the liberals we said: "You hold your principles in such contempt that you despise us because we are willing to fight for them"--- and they arrested us. No wonder they were scared. We were forcing them to look at themselves.

They would not have been so afraid if we had been few, or if we had spoken one at a time. But hundreds and thousands of students had learned the secret of mass action, of standing up together in a community; it was that community of protest that frightened them most. And so they had to arrest, had to destroy, had to put an end to it all----for standing in a community, with petitions of complicity and mass sit-ins and sympathy strikes, was really dangerous. The whole point of the trial, of individuals selected for special punishment, of individual letters, of individual records, is to break down that sense of community. What they want most is that we never act in unison again, never stand up for our rights together.

It was the wisdom of Kafka to realize that in the midst of absurdity man could do only one thing---to go on living as if the trial were unreal, to keep one's sanity and refuse to despair. It is all too easy to renounce the life of involvement, either because "society is too evil to change" or because involvement leads to the tragic absurdity of the trial. But we do not renounce our involvement or our commitment. We intend to continue life as usual---to study, to criticize, to love, to experience, and to engage in social and political action directed at improving our university, our community, our country and our world. Like Sisyphus, we shake our fists at the absurdity of the universe and commit ourselves again to the task.

THE POLITICS OF JUSTICE (continued)

trials would be intolerably expensive and nerve-wracking and would make appeals very difficult. The state also preferred a consolidated trial, but they refused to allow it unless we waived jury.

Although Crittenden's position was indefensible, we did not force him to defend it. We handled it in a gentlemanly spirit.

Our attorneys moved for a single trial. Crittenden denied the motion, explaining for the benefit of the press that a single trial would present staggering difficulties. One jury would have to make 2000 separate verdicts (800 defendants, each with 2 or 3 charges against him); there could be no individual consideration, no "individual justice."

Then we filed up one by one to waive jury trial. It took a week. After that was done, Crittenden reversed himself and granted us a single, consolidated trial. This time there were no speeches about the staggering difficulties of making 2000 separate verdicts; and when the time came, Crittenden made it look easy.

It all would have gone off without a hitch if the judge had not indulged his vanity. After several days of assembly-line jury waivers, Mario Savio's turn came. Mario had completed the formalities and was ready to go when Crittenden launched into a long speech about the sacredness of jury trial. The right to a jury should not be renounced lightly, he said, and asked Mario if he fully understood what he was doing. That was just too much. Mario replied: "I fully understand the shameless hypocrisy to which this court has been reduced"---and drew two days in jail for contempt.

Crittenden understood the remark, and so did the defendants present. But the residents of newspaperland, on campus and off, could not understand why this young smart-aleck had to insult such a kindly, liberal judge so sensitive to the rights of defendants. There were even some defendants who were angry at Mario for losing his temper. Everything had been going so smoothly; why antagonize the judge?

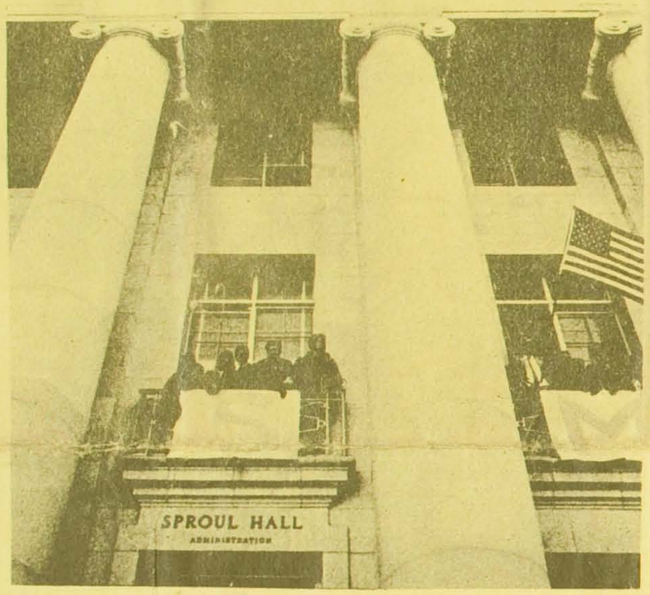
The jury waiver was really the only event of moment in the trial. It expressed what the whole thing was about. The entire purpose of jury trial, after all, is to protect the defendant from being convicted simply because political authorities are out to get him. And it was precisely because political authorities were out to get us that Crittenden forced us to waive jury trial.

From then on, everything unfolded automatically. With conviction assured, there was no drama at all in the trial and no reason for defendants to come to court. Crittenden complained that attendance was low; perhaps he might have gotten better attendance if there had been some uncertainty about his verdict.

He was eager to be friends with both sides. He told jokes in court, often at the expense of policemen on the witness stand. We laughed. Why should we be mad at him? He was just a nice guy who had to do his duty---he bore us no personal ill-will.

He was careful to cultivate his liberal image throughout. When he allowed Clark Kerr to testify, he reminded us of how solicitous he was of the rights of the defense. No matter how slight the possibility that Kerr's testimony could help us, he said, it was his duty to let us subpoena him. Nothing must stand in the way of the rights of defendants.

A few minutes before this, he had refused to let us call Governor Brown (who had promised to take "full responsibility" for our arrests) as a witness. The rights of the defense are important, but the imperatives of power take precedence.



The next day the Governor, safe in Sacramento, told reporters that we were guilty as charged. Our lawyers moved for a mistrial on the grounds that the executive had meddled in the judicial function. Crittenden, denying the motion, said that he hadn't read the newspapers and anyway he wouldn't be influenced by the Governor's opinion.

But a judge, unlike an ordinary citizen, can find out what the Governor thinks without ever reading the newspapers; and although the Governor is a foolish man whose opinions taken by themselves would influence no one, his opinion as Governor of the State is more important than anything in the trial transcript.

THE TURN OF THE SCREW

Right after the verdict, the judge began to play rough. We had been as cooperative as possible all the way through. We had saved the state millions of dollars and countless embarrassments by waiving jury. We had saved the prosecution a great deal of work by stipulating as to the basic facts of the case. We thought that in return we would not all have to appear in person for sentencing. Many of us had left for the summer. Now the honeymoon was over; Crittenden ordered us all back under threat of bail forfeiture and bench warrants.

Now the state prepared for the real "individual justice"---differential sentencing. There is no such thing as an appropriate sentence for trespassing. It all depends upon the circumstances of the particular crime and the personal history of the defendant. This means that the sentences will depend upon what the judge---and the District Attorney and others---thinks of the Free Speech Movement. If they believe (as they often like to say they do) that our ends were laudable but our means were criminal, they will give us all 30-day suspended sentences and nothing more. That is what they do in every petty misdemeanor case where they sympathize with the defendant's motives.

But the sentencing, like the trial itself, will be political. There are certain people on whom the DA wants special vengeance; names like Savio, Aptheker, Goldberg, Weinberg and Goines come readily to his mind. There are others who will be given harsh treatment not through malice but simply from the need for scientific management of society. Student activists must be deterred from putting the authorities on trial a second time.

Under the United States Constitution, no one can be punished for writing pamphlets, voting at meetings, or having Communist parents. Yet there are many of us who will spend time in jail for just such reasons, while others---also convicted of trespassing---will go free with a $50 fine.

BOMB WITHOUT A FUSE

Why was this trial so easy for the state? Why is even the campus public ignorant of what happened? Why was not a single memorable statement made in court? Why did even the defendants lose interest in the trial? Why was Mr. Meese able to go on his triumphal tour?

It is because the state played it cool---and we let them get away with it. Very seldom did they permit themselves gratuitous insults or provocations. They were able to enlist our cooperation by holding over our heads the vague suggestion that they could be a lot worse. At every stage they blackmailed us with something---reactionary judges who would make insulting remarks and refuse to admit defense evidence, compulsory court attendance, stiffer sentences. Sometimes the threats were explicit sometimes they were only in our own minds. In either case, they served to shut us up.

The authorities considered it very important to shut us up. They had been a bit nervous about this trial; they had come to respect and fear the FSM for its capacity to expose dishonesty and moral corruption. We were a time bomb which they approached in gingerly fashion, cutting off the fuse bit by bit until they had rendered us harmless.

When we faced the problem of jury waiver, we knew that the judge was bound to convict; time after time we were told that to waive jury trial meant certain conviction. We also knew how eager the authorities were to deny us a jury trial; that was why they pretended for a while to oppose a consolidated trial. We kept that knowledge to ourselves. Even when Mario was cited for contempt, he was urged not to explain the situation to the press because that would have ruined our good working relationship with the judge.

Edward Meese made a very big mistake December Second when he had us arrested in Sproul Hall. Since then he has learned his lesson. He knows now that the judicious application of carrot and stick can get results for him. We too learned a lesson in Sproul Hall; that we can only win our fight by being fiercely honest---with ourselves first of all.

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