

# The Defender

## Free Speech Trial Newsletter

April 18, 1965

April First: 10 A.M: The Veterans' Administration Building, Berkeley . . . A uniformed officer approaches a microphone: "Please rise. The Municipal Court for the Berkeley-Albany Judicial District is now in session; the Honorable Rupert Crittenden presiding. Be seated." Opposite the Judge sits the court reporter, his fingers lightly touching the keys of a small machine, thus recording the proceedings. At stage right sit the prosecution attorneys; at stage left the defense counsel, in both wings a battery of skilled technicians. And in the audience 155 defendants - attentive and eager. To their left are seated an assortment of men and women: the press.

But this is not a play; it is reality. And the "audience" and the "actors" are united, creating that reality.

The trial is fascinating to the laymen, a challenge to the attorneys. The often-lively proceedings recreate in part the rapid and climactic events on the Berkeley campus in the fall of 1964. District Attorney Coakley's opening statement to the court was broad in scope, dealing with the history of the FSM. He characterized the FSM as a "small group of seasoned demonstrators," and a "motley array of students and non-students." He assembled some vociferous phrases cluttered with adjectives to describe Mario Savio. The defense attorneys objected to the tone and character of Mr. Coakley's opening statement, and Judge Crittenden urged the district attorney to "temper your remarks in view of the objections." Mr. Coakley proceeded, heeding the Judge's words and deleting numerous and presumably offensive adjectives. Mr. Coakley promised to prove to the court, beyond reasonable doubt, that the defendants were guilty of trespassing, refusal to disperse from the scene of an unlawful assembly, and resisting arrest.

One of the first acts of the prosecution in presenting its case was to play the tape of the now-famous speech made by Mario Savio at noon on December 2. The speech seemed out of place in the austere atmosphere of the court. A long line of prosecution witnesses followed, and are still appearing - administration officials, including former Chancellor Edward W. Strong, and various police officers.

We will, in The Defender, endeavor to recapitulate the important testimony of witnesses, from our sometimes sketchy notes taken in court, indicating the relevancy of the testimony to the charges. We do so from the viewpoint of the defense, and on behalf of the defendants. We write in the firm belief that the 800 arrested students, including the 155 presently on trial, are not

guilty of the above charges. We reaffirm our belief as defendants, and on behalf of our co-defendants, that the first and fourteenth amendments to the U.S. Constitution protect certain inalienable rights, and we reaffirm our belief that the university administration may not regulate the content of speech.

DR. EDWARD W. STRONG

Dr. Edward W. Strong, former Chancellor of the Berkeley campus, under direct examination by Lowell Jensen, a prosecution attorney, testified that on the morning of December 3 he had read a prepared statement to the demonstrators on the second, third, and fourth floors of Sproul Hall. In that statement, Strong stated that the sit-in in Sproul Hall had reached a point such that it had materially impaired the functioning of the building, and that the demonstration "had become" an illegal assembly. Dr. Strong further stated: "The University always stands ready to engage in the established and accepted procedures for resolving differences of opinion." The Chancellor concluded his statement by asking the demonstrators to "Please go."

Cross Examination

The cross examination of Dr. Strong was conducted by defense attorney Malcolm Burnstein. Mr. Burnstein centered his questions on Dr. Strong's statement made in the early morning hours of December 3 - that the University always stood ready to engage in discussion to resolve differences of opinion. Mr. Burnstein asked if it were not true that "in the fall semester of 1964, during which time the demonstration occurred, there was on the campus a dispute concerning rules regarding the rights of students to organize politically, to solicit funds for political purposes, and to advocate political acts." After objections for the prosecution and a reframing of the question, Dr. Strong answered that there had been such a dispute. Mr. Burnstein then went on to question Dr. Strong about the channels open for resolving that dispute: the availability of administrators for discussions with student leaders; the interpretation and the implementation of the agreement signed on October 2 between leaders of the student demonstrators who had surrounded a police car for 32 hours, and President Kerr; and disciplinary action initiated by Dr. Strong against four FSM'ers, which was the immediate catalyst for the December 2 sit-in.

Mr. Burnstein, through his examination of Dr. Strong determined that at 11 p.m. on December 2, Vice-President Bolton came to the Chancellor's office. There a conversation ensued between Dr. Strong and Dr. Bolton concerning "securing the building (Sproul Hall) after the demonstrators were removed." Their conversation was interrupted when Dr. Bolton left the office to receive a telephone call. When he returned, Dr. Strong testified, "My instruction was altered." Governor Brown had ordered police to the campus. Dr. Strong was told to proceed to Sproul Hall, in the early morning hours of December 3 and read the oft-quoted statement.

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#### Legal Titbits

(1) Defendants may not be subpoenaed by the prosecution. If you are a defendant in this case, you do not have to testify. Some defendants will testify in accord with decisions in consultation with defense attorneys.

(2) The trial proceeds accordingly: the prosecution presents its case; the defense may cross examine prosecution witnesses. Then the defense presents its case; the prosecution may cross examine defense witnesses. The prosecution may present a rebuttal, which may be followed by a defense rebuttal. The Judge will then rule. If found guilty on one or more of the charges, we may appeal the decision to the Appellate Court. If necessary, we may try to appeal all the way to the Supreme Court.

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#### THE DEFENSE ATTORNEYS: Brief Sketches

Malcolm Burnstein: A graduate of UC's Boalt Law School in 1958, Mr. Burnstein has traveled widely, clerked with the California State Supreme Court, and distinguished himself as one of the leading civil rights attorneys in the Bay Area. He is one of the two legal advisors in the Western Region for CORE. Presently with the law firm of Treuhaft and Walker, Mr. Burnstein has been a legal advisor for the FSM since the middle of October. He is a member of the Legal Honor Society and the National Lawyers' Guild.

Richard Buxbaum: Mr. Buxbaum graduated from Cornell in 1952 and received his Master's in Law in 1953. He is currently a Professor of Law at UC's Boalt Law School, where he teaches courses in corporation law and government control of business. He was the chief prosecutor for the European Headquarters of the U.S. Army from 1954 to 1957. He joined the law firm of Senator Keating of New York in 1957 and remained with that firm until 1961.

Henry Elson: Mr. Elson is a graduate of Boalt Law School and is presently with the firm of Howell, Elson and Grogan in Berkeley. He was chairman of the Lawyers' Panel of the Berkeley-Albany Chapter of the American Civil Liberties Union, which position he resigned in order to handle the FSM trial. He has represented persons who have been subpoenaed by the House Un-American Activities Committee. He is a member of the National Lawyers' Guild, and is on the Board of Directors of the Pacifica Foundation (KPFA Radio) and the Family Service Agency.

Stanley Golde: Mr. Golde is a graduate of Boalt Law School and is presently with the criminal law firm of Golde and Strellis. Mr. Golde has distinguished himself as one of the leading criminal attorneys in Alameda County. He is a member of the National Association of Criminal Defense Lawyers, president of the Criminal Court Bar Association, and a member of the Northern California Chapter of Criminal Trial Lawyers.

Norman Leonard: Mr. Leonard is currently with the law firm of Gladstein, Anderson, Leonard and Sibbett. He has great distinction as a leading civil liberties lawyer and as an authority on constitutional law. He has long been counsel for the San Francisco ILWU and has represented persons called before HUAC. He is a member of the National Lawyers' Guild.

#### THE PROSECUTION ATTORNEYS: Brief Sketches

J. Frank Coakley: Mr. Coakley has been the District Attorney of Alameda County for many years.

David C. Dutton: Mr. Dutton is an Assistant District Attorney, and has been with the prosecution staff for several years.

D. Lowell Jensen: Mr. Jensen is a graduate of Boalt School of Law -- class of 1952. He has been a Deputy District Attorney since 1953, and has distinguished himself as one of the chief trial lawyers for the District Attorney's office.

Edwin Meese III: Mr. Meese graduated from the Boalt School of Law in 1958. He is a Deputy District Attorney and secretary of the Criminal Court Bar Association, of which Mr. Golde is president.

## THE PROSECUTION'S CASE -- SO FAR

Since the start of the trial on April 1, the prosecution has called numerous witnesses to testify about their observations of the Sproul Hall sit-in on December 2 and 3. Key witnesses in addition to Chancellor Strong, have been Lt. Chandler, second in command of the University of California Police Department, and Captain Beall, in command of the Berkeley Police Force dispatched to Sproul Hall in the early morning hours of Dec. 3. Other witnesses included Sgt. Ludden of the UC Police, who locked the doors of Sproul at 7 pm on Dec. 2; Mr. Harder in charge of the UC purchasing department with offices on the third floor; Mr. Gilliam, chief registrar at UC with offices on the first floor; Mr. Campbell, vice-chancellor for Business and Finance, with offices on the third floor; Mr. Mundell, accounting officer for the University, with offices on the fourth floor; and Deans Murphy and Van Houten, both of whom spent much of December 2 and 3 in the Office of the Dean of Students on the second floor of Sproul Hall.

The University employees testified to the disruption of their work as a result of the sit-in. Mr. Harder, for example, on direct examination said that the events forced him to cancel four appointments on December 2, including two with persons from the East. On cross-examination it was determined that two of the appointments (not the ones with the easterners) were to have been in the morning, before the sit-in began. On redirect questioning Mr. Harder testified that he canceled the morning appointments because: "My feeling was that this was a poor time to bring even local visitors to the office for a conference." All the witnesses employed in Sproul Hall testified that by about 1 pm on Dec. 2 they had ordered or suggested that all their female employees leave for the day.

Captain Beall, from the Berkeley Police Department testified that at about 10:50 pm on December 2, Governor Brown gave orders that Sproul Hall was to be cleared, and the campus restored to order. The decision and arrangements to arrest the students were made jointly by Chief Fording (Berkeley Police), Chief Woodward (Campus Police), Captain Waldt (Alameda County Sheriff's office), Captain Beall (Berkeley Police), Inspector O'Connell (California State Highway Patrol) and Mr. Meese of the District Attorney's office, at a meeting held in the basement of Sproul Hall at 11 pm on December 2.

Captain Beall also testified that on the morning of December 3 he went to the second floor of Sproul Hall. He described the scene as one of confusion and stated that there was a tremendous amount of noise. He heard the sound of the microphone that was being used on the balcony to inform students in the Plaza of the events inside Sproul Hall. Jack Weinberg was operating the microphone. Captain Beall testified that he resolved to obtain help from additional officers to cease the operation of the microphone, because of the noise it was making. He obtained several men from the Alameda County Sheriff's Department and proceeded up the stairs toward the balcony. He continued stating that the students shouted that the police were coming -- that a good deal of confusion followed, but that he was successful in arresting Mr. Weinberg, and in disconnecting the microphone.

Defense attorney Stanley Golde cross-examined Captain Beall., determining that the Captain had been in plain clothes on the night of the sit-in, and that he had walked unnoticed among the students. Mr. Golde asked the Captain why he hadn't simply approached Mr. Weinberg and asked him to disconnect the microphone. The Captain replied that he had feared there might be a riot if he proceeded in that manner.

Golde: Is it fair to say . . . the reason you didn't go over and speak to Jack Weinberg was because you were afraid there would be a riot?

Beall: Yes.

Golde: That would imply, would it not, that it was peaceful up there -- that there wasn't a riotous situation . . . ?

Beall: I would not call it peaceful. On the other hand it certainly was not a riot in the true sense of the word either.

Golde went on to ask the Captain if he thought he would avoid a riot by using uniformed and armed police to cease the operation of the microphone. The Captain replied in the affirmative.

The trial is proceeding now with the prosecution calling the arresting officers to testify about the arrest procedure and actions by each of the 155 persons presently on trial. It is a tedious process for both sides, but will continue until all the individual cases are entered into evidence.

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MEMO

1. The courthouse is a public building -- you will not be charged with trespassing if you sit-in (on the proceedings). Attend the trial whenever you can: Mon. -- Thurs. - 10 am - High Noon / 2 pm - 4 pm.  
1931 Center St. (between Grove and Milvia).
2. Ask organizations to pass resolutions calling for amnesty for the 800.
3. The Defense Fund needs funds. Please contribute to:  
Independent Faculty-Student Legal Fund  
P. O. Box 785  
Berkeley, Calif.

Those responsible for the Defender: dana shapiro  
kathie frank  
bettina aptheker  
labor donated

April 18, 1965

Dear defendant:

The Free Speech Defense Fund needs money. \$. Our lawyers are contributing generously of their time, but money is needed for office expenses, supplies, this newsletter, and possibly for the costs of filing an appeal.

A committee of the Council of 20 would like to send requests to people you think might be willing to contribute. Please supply names and addresses of sympathetic relatives, businessmen, philanthropists, liberal college professors, politicians and friends.

Dave Stein or Bettina Aptheker will collect these forms in court, any day, or they may be returned to the Lawyers' office, 2214 Grove St.

1. _____ _____ _____	5. _____ _____ _____
2. _____ _____ _____	6. _____ _____ _____
3. _____ _____ _____	7. _____ _____ _____
4. _____ _____ _____	8. _____ _____ _____

May we use your name?    yes     no

If yes, what is your name? \_\_\_\_\_

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