

The Defender

Free Speech Trial Newsletter

April 25, 1965

This week the prosecution's case dragged on through a long procession of Berkeley police officers who assisted in the arrests of the 155 students currently on trial. Their testimony, which was largely aimed at proving that the students resisted arrest, came directly from the police reports designated as the "arrest tag" and the "offense report." With the exception of a few "unusual" cases, the police officers denied any independent recollection of the arrests in which they participated.

Until the procedure was modified, each officer sat in the witness chair with a stack of brown envelopes on his lap. When the district attorney called his attention to a particular defendant, the officer opened the appropriate envelope and answered the questions put him on the basis of its contents. Each envelope contained the police reports on a defendant and a picture of him seated on the floor with a number held before him. The number matched the one on the "arrest tag." This correspondence enabled the officer to testify that on December 3, 1964, in Sproul Hall, he had arrested "Jane Smith" at a specific time (recorded on the tag), on a certain floor (indicated on the tag), and additionally charged her with resisting arrest for her refusal (indicated on the tag) to comply with his orders.

The defense objected to the use of these records on the grounds that without them the officers could not remember one defendant from another and that they were therefore not testifying on the basis of personal knowledge. The prosecution argued the legal principle of "past recollection recorded." The officers, they said, had filled out the "arrest tags" at the times the arrests were made and were thus entitled to "refresh" their memories with them. The defense objection was overruled.

On several occasions defense counsel established that the officers not only had no independent recollection of the events, but that some of them had not even filled out the "arrest tags." Another officer had filled them out instead, and the testifying officer had merely "checked" them for errors, then signed them.

The cross-examination of Officer Mower revealed that the "arrest tags" on all but four of the arrests to which he was testifying had neither been filled out nor checked by him. He admitted that he had no idea when, where, or by whom they had been made out.

The "offence reports" which the officers consulted during their testimony were supposedly written by the signatories of the "arrest tags," on the basis of these tags, some 15 days after the events.

The prosecution plowed through all the "offense report" evidence despite the defense stipulation at the beginning of the trial that the 155 students were in Sproul Hall, and were arrested there, on December 3, 1964.

In the testimony which presumedly demonstrated that the students had resisted arrest, the officers alleged that they witnessed no brutality in Sproul Hall, and that no unnecessary force was used in removing the students. On cross-examination, they testified that various holds were applied to the students to raise and transport them from their places on the floor. The most popular hold, by consensus, was the "come-along", an arm and wrist grip, which, according to the officers, does not "necessarily" cause pain. Other techniques were the bending back and twisting of fingers and the application of arm bars, hammer locks, and pressure to the neck and throat.

Some officers testified that they brought students to transporting officers stationed at the stairwells rather than the elevator. Of course, none of them actually saw a students being dragged down the stairs.

One officer, when asked what he observed being done to the students after they were arrested, answered that some of them were "drugged" to the elevator. Everyone understood what he meant.

Officer Gray actually admitted on cross-examination that some students moved forward to speed up and assist in their arrests. During this testimony, the prosecution attorneys noticeably grimaced.

It was a week of grim farce. The only suggestions of relief came when Judge Crittenden hopefully inquired of the prosecution: "Do the People rest?" The People replied: "No your honor -- not yet."

The arrest of Mario Savio

The prosecution brought in a special witness to testify about the arrest of Mario Savio. At 11 a. m. , April 21, Captain Waldt, chief of the Criminal Division of the Alameda County Sheriff's Department took the stand.

Captain Waldt testified that at 4:35 a.m., December 3, he noticed an 'obstruction' in the basement corridor of Sproul Hall, between the elevator and the south end of the corridor where the University police station is located. He noted that about 20 persons -- defendants and officers -- were blocked by this "obstruction." Captain Waldt proceeded to the area and found Mario lying on his back, on the floor, with his head near the wall, his body oblique to the wall. The captain continued by stating that he spoke to Mario for three to five minutes and requested him to get up because he was blocking the hallway. Waldt said that Mario's only retort was, "You'll have to arrest me." Mario was then lifted by four officers and carried into the booking area in the U.C. police office. He was booked, and thereafter walked to the bus outside.

Mal Burnstein cross-examined Captain Waldt. Waldt insisted that Mario was blocking the entire corridor, although he affirmed that Mario was not perpendicular to the wall, but oblique to it. Mr. Burnstein then asked where the Captain had been immediately prior to his conversation with Mario. The Captain could not remember where he was going, or what he had been doing. Then Mr. Burnstein asked: "It is possible, then, that Mr. Savio was dragged to that position where you found him in the hall, isn't it?" The Captain: "Yes, sir, I suppose it's possible."

(N.B. The scale drawing of Sproul Hall basement shows the corridor to be approximately 12 feet wide; contrary to the opinion of some, Mario is a mere 6'11".)

The Defender in its first issue could not cover all the important testimony during the first two weeks of the trial. We endeavor to do so now - very briefly.

Lt. Chandler

On April 6, Lt. Merrill Chandler from the U.C. Police Department testified that he attended a short portion of the noon rally on December 2, afterwards watching Mario Savio, Jackie Goldberg, and Ron A. Astasi lead the procession of students into Sproul Hall. He watched as students filled the hallways, unbolted the windows opening onto the balcony over the plaza, and tied a rope to the balcony railing, by which the demonstrators raised their supplies of food.

Lt. Chandler said he made a statement on each floor, starting at 6:45, announcing that Sproul Hall would close at 7 p.m., and asking that everyone leave the building. He also made a statement on each floor after 3 a.m. on December 3, immediately following Chancellor Strong's request to leave, with a reading of the riot act. He stated, in part: "This assemblage is now in violation of the law. . . ."

Mr. Chandler's testimony is corroborated by the testimony of Lt. Chandler's partner, Lt. [Name], who testified that he also saw the demonstrators on the balcony and that they were raising their supplies of food.

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Mr. Golde's main object in his cross-examination of Lt. Chandler was to establish who was responsible for the orders to make the arrests which were carried out in Sproul Hall on the morning of December 3.

Under cross-examination, Chandler said he believed the defendants were in violation of the law at 7 p.m. He had made no arrests then, he said, because he had too few men, but he admitted he had not tried to get additional men. No actions were taken to remove the students until after 11 p.m., December 2 (after Governor Brown's order).

Chief Woodward, Chandler's superior, had given Chandler the statements he read at 7 p.m. and 3 a.m. Woodward also gave the order that any person wishing to leave after the announcements could do so, but only after leaving his name at the door.

Peter Van Houten

Peter Van Houten, an associate dean of students, who spent most of his time during the fall semester, 1964, collecting the names of students who were in violation of University regulations, testified for the prosecution on April 5.

Mr. Van Houten testified that he was a physical education major at Cal; then he did graduate work in Education at the University of California. Mr. Van Houten became an assistant dean in 1960, an associate dean in 1962

Van Houten was on the second floor of Sproul Hall for most of the demonstration. He testified as to the conditions in the corridors, etc. As an associate dean, he is said to be particularly concerned about student problems and the treatment of students. Mr. Leonard on cross-examination asked Van Houten if he was concerned about students, and Van Houten affirmed that he was.

At about 8 a.m. on December 3, Mr. Van Houten heard students speaking through the microphone on the second floor balcony of Sproul Hall. He said that they were telling the students below that they were being "mistreated" (Van Houten's words) by the police. Shortly thereafter, Van Houten said he heard the shattering of glass, cries of "Brutality!" and saw a billy club come flying out over the balcony.

Mr. Leonard: Mr. Van Houten, when you witnessed all of this, and as a dean concerned about the welfare of students, did you investigate that area on the second floor to see if students were being mistreated?

Mr. Van Houten: No, sir, I did not.

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