

The Defender

Free Speech Trial Newsletter

May 16, 1965

TO ALL DEFENDANTS:

- 1) Are you coming to court sessions whenever you are not in class ?
- 2) Have you sent in a list of possible contributors, as has been requested in the past three Defenders ? (The address: Lawyers' Committee, 2214 Grove, Berkeley. PLEASE MAIL YOUR LIST TODAY IF YOU HAVE NOT DONE SO.)

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The following press release was issued by the Council of Twenty in response to the report issued last week by the Byrne committee. This committee was commissioned by a special Regents' committee under Regent William Forbes to study the disorder on the Berkeley campus and to make recommendations regarding the structure of the University. Some copies of the Byrne committee report have already been distributed through the Free Student Union. The Council of Twenty hopes to be able to make copies available to all defendants soon.

The Press Release

"The FSM arrestees welcome the Byrne Committee report. They are glad to see that the official report to the Regents on the unrest last fall corrects many false impressions about the events on the Berkeley campus and about the motives of the demonstrators.

"The arrested students feel that the report is correct in stating that 'the basic cause of unrest on the Berkeley Campus was the dissatisfaction of a large number of students with many features of the society they were about to enter.' The report recognizes the desire of the students 'not that society be perfect but that they have the opportunity to make it so.' This is why they desired 'freedom to use University property as a base for the organization of their efforts.' The report concludes that the students 'saw direct action and civil disobedience as instruments for affirming their own moral commitment to a more just society.'

"The report refutes those who objected to the students' disuse of official (ASUC) student government channels for protest. It states 'some campus administrators only sporadically and infrequently consult with student governments,' and 'when the student governments are consulted, their counsel is not given serious consideration.' Furthermore, even the local campus administration was not free to negotiate with the students: 'the President and the Regents . . . expected and wanted decisions . . . to be referred to them.'

"The report also points out that the FSM had the overwhelming support of the student body. 'A reliable survey,' it says, 'concludes that before the December

sit-in, about two-thirds of the students said they supported the FSM's objectives, and about a third supported its tactics.' This support 'increased after the December sit-in.' Finally, the report leaves no doubt that the uprising was a spontaneous response to changes in University regulations, and was in no way influenced by any outside group."

This Past Week in Court

The defense continued presenting its case this week. The principal aim of the direct examination was to establish the "state of mind" of the defendants when they entered Sproul Hall on Wednesday, December 2, 1964. The basic contention of the defense is that the Administration did not and would not negotiate with the students in good faith and that it ultimately closed all those channels of communication through which the students would normally seek changes in the regulations governing political activity on the Berkeley campus.

According to direct testimony, the final blow to the students' attempts at reaching an understanding with the Administration was meted out by Chancellor Strong on November 28 when he sent letters to four student leaders ordering them to appear before the Faculty-Student Conduct Committee to face disciplinary action for their roles in the demonstrations, directed against campus regulations which thousands of students considered unconstitutional, on October 1 and 2.

The defense contends that - with all negotiations having failed, with all channels of communication denied the students, and with disciplinary measures pending in the case of the four students who had helped lead the campaign for constitutional rights - they defendants were justified and constitutionally protected when they entered Sproul Hall in order to communicate personally their grievances to the Administration.

Finally, on broader grounds, the defense is attempting to prove that the political rights denied the students were the very rights most necessary for continued student participation in civil-rights-and-liberties movements in the North as well as the South.

Testimony of Bettina Aptheker

On Monday, May 10, defendant Bettina Aptheker took the stand. Her appearance followed that of Jackie Goldberg, who had related the history of the pre-FSM crises. Bettina's testimony began with the formation of the FSM on the weekend of October 3 and 4 and concluded with her arrest in Sproul Hall on December 3.

During the early part of the testimony, Deputy District Attorney Edwin Meese III continually objected to its direction on the ground that it was irrelevant. After numerous interruptions, Henry Elson, attorney for the defense, asked Bettina whether her state of mind immediately prior to and during the sit-in was influenced by the events of the period September 14-December 2. She replied that it was; the Court ruled to allow the original line of questioning, and Bettina was allowed, with few objections, to relate the story of the FSM.

Bettina testified that, in the early morning hours of October 5, the FSM steering committee was called to the campus to meet with member of the faculty. At the meeting the FSM was informed that Chancellor Strong would order the arrest of Mario Savio if he spoke at a campus rally scheduled for noon of the same day. The reason given was that, because Mr. Strong had ordered Mario "indefinitely suspended" from the University on September 30, he considered him an unauthorized person on University property without permission. The FSM insisted that Mario was a signatory to the agreement of October 2 and had to speak to the students and answer their questions in connection with its signing. In the course of the discussion, Professor Nathan Glazer finally agreed to introduce Mario from the steps of Sproul Hall at noon that day. He did so; Mario spoke and there was no arrest.

In the days that followed, Chancellor Strong acted on points Two and Four of the Agreement of October 2 without previously consulting the students - then constituted as the FSM - involved in the controversy. A dispute arose between the Administration and the students over the implementation and interpretation of the agreement. A particular point of grievance was the fact that Chancellor Strong had submitted the cases of the eight suspended students to the Faculty-Student Conduct Committee rather than to a committee of the Academic Senate. The FSM learned that there was no such committee of the Senate. This submission of the cases to the wrong committee was compounded by Chancellor Strong's creation of the Campus Committee on Political Activity (CCPA). In creating this committee, Bettina testified, the Chancellor arbitrarily appointed ten of its twelve members, including two of the four student delegates.

After fruitless meeting with lower-ranked administrators, the FSM steering committee arranged a meeting with Chancellor Strong on the afternoon of Monday, October 12. At the meeting the FSM called for a reconstitution of the CCPA and the submission of the cases of the eight suspended students to the faculty committee of the Academic Senate (and suggested one be created ad hoc if none existed). Mr. Strong maintained that the CCPA was advisory to him and that he could not dissolve it without its own recommendation to that effect. As far as the student cases were concerned, he advised that, because he was not a signatory of the agreement, the FSM should see President Kerr.

The FSM tried to arrange a meeting with President Kerr and, subsequently, with Vice-President Bolton. Both attempts were unsuccessful. Finally, it resolved that on Friday, October 16, it would set up tables in violation of University regulations in an attempt to force the Administration to meet with it to discuss the interpretation and implementation of the October 2 agreement. On the same day, it would send representatives to the Regents' meeting which was to be held at the Davis campus.

On October 15, shortly before midnight, Professor Arthur Ross (Department of Industrial Relations), appeared at an FSM steering committee meeting. He agreed, after discussion, to work out proposals satisfactory to the FSM

for the reconstitution of the CCPA and the submission of the cases of the suspended students to an ad hoc committee of the Academic Senate. The FSM called off its demonstration for the 16th and at about 3 p.m. on October 16 the Administration accepted the Ross proposals.

The reconstituted CCPA met for the first time on October 21. Before it convened, Bettina testified, she saw a copy of a memorandum prepared by President Kerr for the Board of Regents. It consisted of a revision of University regulations to the effect that lawful off-campus political and social action could be advocated and implemented on campus.

The CCPA Administration representatives introduced a resolution on advocacy which was, in substance, Mr. Kerr's proposal to the Regents. In essence, the Administration position was, that a person could advocate on campus that students picket somewhere off campus. If subsequent to such advocacy, a picket line was formed and violence occurred on the picket line, or if a sit-in ensued, the student who advocated the picket on campus, and the organization which sponsored his speech, would be subject to University discipline.

On November 7 the CCPA deadlocked over this advocacy issue. The FSM maintained the position that the Administration could in no way regulate the content of speech. Holding this position, and taking into consideration the facts that the CCPA was hung on such a crucial issue and that the Administration was not meeting with it in good faith, the FSM decided to set up tables on campus on Thursday, November 9. Its intention was to exercise its constitutional rights at the same time that it continued to meet as part of the CCPA. This line of action seemed eminently reasonable to the FSM because it felt that the CCPA, though ineffective thus far, at least represented a communications channel still available to the students. Shortly thereafter, Chancellor Strong dissolved the CCPA (without its recommendation for self-dissolution).

On November 9, 75 students were cited by the deans for "unlawfully" manning tables. Between November 9 and 20, tables were regularly set up in direct violation of University regulations. But there were no further citations.

On November 20 the Regents met in University Hall. The FSM sent a delegation composed of Mona Hutchins, Ron Anastasi, Michael Rossman, and Mario Savio to the meeting. The four were ushered into the press section, but they were not allowed to speak. Later, Ron and Mario reported back to the 5000 students assembled on the lawn across the street. They told how Messrs. Strong and Kerr had recommended punishments for the eight suspended students contradictory to those recommended by the Heyman Committee (the ad hoc committee established to consider these cases). The pre-CCPA position on advocacy - that advocacy of unlawful action be prohibited on campus and that the University Administration retain the right to determine legality - was unanimously passed by the Regents. The gathering of students rejected the idea of an immediate protest sit-in in University Hall. They were, however, angered by the ruling of the Regents.

Late in the evening of November 23 Professor Zelnick (Department of History) approached the steering committee with a proposal worked out by a group of faculty members. It called for the establishment of a system of hearings with a maximum degree of due process for students cited under the Chancellor's rules. The steering committee felt that if the Administration would adopt this system, the student political groups would be able to "live with" the regulations. Prior to December 1, Professor Rosovsky informed Bettina that he had submitted the proposal to President Kerr, who had thanked him for them and told him (Rosovsky) that he (Kerr) would put them in his file.

Then, Bettina continued, after learning that Chancellor Strong had ordered four students to appear before the Faculty-Student Conduct Committee to face charges arising out of the October 1-2 demonstrations, the FSM moved to plan the sit-in. Preliminarily, the FSM made a final appeal, demanding that the charges against the students be dropped, that the charges pending against organizations which had violated University regulations be dropped, and that there be a "maximization" of political freedom at Berkeley. There was no reply from the Administration. As a result, Bettina, together with more than a thousand other students, occupied Sproul Hall on the afternoon of December 2.

Bettina testified that she was arrested on the second floor of Sproul at 9:10 a.m. on December 3. After being placed under arrest, she was not asked to walk but she was dragged to the elevator by her left arm.

Mr. Elson: What happened next?

Bettina: An officer said, "All right sister, the show's over now. You can get up now."

Mr. Elson: What did you do?

Bettina: Nothing.

Mr. Elson: What happened next?

Bettina: I was kicked in the stomach. I got up.

Cross-Examination

Bettina was methodically cross-examined by Mr. Meese, who re-questioned her about each of the FSM steering and executive committee meetings held in October and November, asking where each was held, who attended, and what the substance of each meeting was. At one point he questioned her closely concerning the Rossman Committee in order to ascertain what kind of organization it actually was, because it had a student representative on the FSM executive committee. Bettina explained that the committee represented those people who had organized to write the Rossman Report, a lengthy document with notes and appendices, researching the "History of Repression of Political Activity on the University of California Berkeley Campus, 1958-1964." When asked whether she had written part of the report, Bettina replied that she had not. Mr. Meese then asked if she had not written the section on the FBI and student organizations. Bettina answered that she had been asked to write it but that she had declined because she was too busy with other matters. "Did you know," Mr. Meese

continued, "your name appeared on the report as one who helped write it?"
Bettina: "No." He also asked if she knew whether or not Ron Anastasi, Jack Weinberg, and others whose names appeared on the report had helped to write it. Bettina said she did not know that they had participated in its production.

Raising his voice emphatically, Mr. Meese inquired about Bettina's affiliations with the DuBois Club. Defense attorney Elson objected on the ground that Mr. Meese's questions were remote, but the Judge allowed them. Finally, Meese established by further questioning of her that Bettina had been one of the founding members of the Berkeley chapter of the club.

A rather startling question asked on the cross examination was: "Miss Aptheker, did you have an agreement with Miss Goldberg that she would testify to everything before October 2 and you would testify to everything after October 2?" Bettina answered that she had been more intimately involved with negotiations, rallies, and meetings after October 2, and that Miss Goldberg had been very much involved prior to that date. Later, on re-direct, Mr. Elson gave her a chance to explain her answers more fully:

Mr. Elson: Why didn't you testify to anything before October 2 on direct testimony?

Bettina: Because I wasn't asked any questions about what I did before October 2. If I had been, I would have answered them.

At 11 a.m. on May 13, after three and a half days of testimony, Bettina was excused from the witness stand.

Testimony of Mario Savio

Mario Savio took the stand on the afternoon of Thursday, May 13. He is expected to remain under examination until well into the week of May 17.

The initial questions directed to Mario by Norman Leonard, defense attorney, served to contradict the characterization ascribed him by District Attorney Coakley during his opening statement in behalf of the prosecution. It was brought out, despite Coakley's assertions, that "Mario Savio" is the name which appears on his baptismal certificate, which nowhere contains the name "Robert."

Mario's testimony about his arrest in Sproul Hall went towards the impeachment of the prior testimony of Captain Waldt of the Alameda County Sheriff's Department. Waldt had testified that he found Mario lying on the basement floor of Sproul hall, had asked him to rise, and arrested him when he refused to do so. His story implied that Mario was purposely blocking the corridor in order to prevent police from bringing other defendants into the basement campus police office for booking. Mario, however, said what had actually happened was as follows:

Just prior to his arrest, he had gone to the basement and spoken with Lieutenant Chandler of the University police to ask permission for attorney Alex Hoffman to be allowed to come into Sproul Hall to speak with the students. The request was denied. As Mario made his way to the upper floors, his way was blocked by a policeman who edged him back down the stairs. Toward the bottom of the stairs, Mario dropped to the ground; he was then dragged to a spot in the basement corridor where he remained until Captain Waldt arrested him.

Answering to another line of questioning, Mario testified that as of September 14 he was incoming chairman of Campus Friends of SNCC. One of the organization's activities was informing the University community of SNCC's projects, such as its voter registration drive and freedom schools in the South. Mario had participated as a SNCC worker on a Mississippi project last summer. His experiences there, he stated, were of decisive importance in his decision to fight for a change in University regulations governing civil liberties and rights.

Mario said that he spoke at the September 28 rally, participated actively in the meetings with Dean Towle, and was present when the five students were cited for manning tables on September 30. On that day he went to Sproul Hall, along with several hundred other students, to present petitions of complicity to the Dean of Students. Dean Williams refused the petitions but added the names of Mario, Art Goldberg, and Sandor Fuchs to the list of cited students. At 11:45 p.m., without any hearing or prior consultation with the students, the University "indefinitely suspended" all eight cited students.

On the following day Jack Weinberg was arrested for manning a table. The police car which was brought to transport him from the campus was surrounded by students, who refused to let it pass. A rally formed around the car, in which Jack remained until the next day. Mario testified that he took off his shoes, climbed onto the car, and addressed the crowd from its roof. Others spoke, including ASUC President Charles Powell, who later used "his good offices" to secure a meeting for himself and Mario with Chancellor Strong. Mr. Strong, however, refused to negotiate with the demonstrators.

In further testimony, Mario stated that he and other student leaders met with President Kerr on October 2 and signed an agreement designed to end the rally and alleviate the immediate aggravation. Afterwards, Mario returned to the police car, read the agreement to those assembled, and asked them to "Please rise and, with dignity, go home." He said that as he spoke he could hear the sound of the motorcycles of the assembled police roaring in the background.

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A REMINDER: funds are desperately needed to defray defense expenses.
PLEASE CONTRIBUTE to: Independent Faculty-Student Legal Defense Fund
P.O. Box 785, Berkeley, California

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