

# The Defender

## Free Speech Trial Newsletter

May 23, 1965

To A L L Defendants: SEE PAGE ELEVEN

1) No one may leave the area this summer without express permission. Anyone wishing to do so must make a written request to Mal Burstein to present to the Court. This request, which should be submitted at the Lawyers' office as soon as possible, must contain your name, your prospective destination and address, and your planned dates of departure and return.

2) Only a dozen defendants have so far responded to the call for help with the funds campaign. We are not in a position to finance our own defense. Expenses are mounting. Outside help is needed. It can only be obtained with your cooperation. PLEASE MAKE AN EFFORT TO SUBMIT A LIST OF POTENTIAL CONTRIBUTORS WITHIN THE NEXT WEEK. Send the list to Lawyers' Committee, 2214 Grove, Berkeley. (SEE PAGE ELEVEN)

3) Attendance continues to be a problem. It will be an even greater one with finals approaching. You can help alleviate it by appearing once a week. Come more often if you can, but fulfill this minimal obligation, whatever your schedule. IF YOU ARE ONE OF THE 155 CURRENTLY ON TRIAL, BE SURE YOU ARE IN ATTENDANCE AT ALL COURT SESSIONS FROM WHICH YOU HAVE NOT BEEN LEGITIMATELY EXCUSED.

### The past week in Court

The first three days of this week's trial were taken up with the direct and cross examination of Mario Savio. Continuing where he had left off on the previous Thursday afternoon, Defense attorney Norman Leonard questioned Mario about his participation in the major events which took place between October 2 and December 3, at which time he was arrested in Sproul Hall. In order to facilitate the proceedings, Mr. Leonard told the Court that he would not dwell on those things for which foundation had been laid and about which sufficient testimony had been entered during the examinations of Jackie Goldberg and Bettina Aptheker. Instead, he directed the examination in such a way as to develop and show the "state of mind" Mario entertained when he entered the building to sit it. Furthermore, he tried to shape the "reasonableness" of that state of mind and the constitutional protection afforded the social and political acts which it motivated.

TO ALL DEFENDANTS: SEE PAGE ELEVEN

Throughout his testimony Mario tried to define a frame of reference within which his answers, his past acts, and the actions of the FSM could be explained and understood as socially and politically reasonable and justifiable. Time and again, on direct and cross, he made it clear that, although acts such as the first sit-in, blocking the entrance to the Dean's office, and surrounding the police car were, to his mind, constitutionally protected, it did not matter, in a certain larger perspective, whether or not they were. What was essential was the complex of goals towards which these actions were means. According to his testimony, neither he nor the FSM was ever guilty of "purposely" violating a University regulation simply for the sake of the violation. If violations were committed, they were performed in protest. Whatever he or the FSM did was intended to challenge the University's right to arbitrarily pass down regulations without previously consulting the students who would be affected by them, to bring into question the substantive validity of those regulations, and to work towards the procurement and preservation of constitutional protection for students exercising social, political, and academic freedom.

As to the constitutionality of various things done by students on December 2 and 3, Mario testified on cross-examination that this was a matter beyond his jurisdiction and that it would ultimately be decided, at least in part, by the trial. Again, he explicitly defined the contexts of the actions. While admitting that many of the FSM techniques were not proper in a healthy University community, he pointed out that they had often succeeded where "more legitimate" techniques had failed. This was because the University community was not, in fact, healthy. The actions, which were designed to obtain "mundane" rights such as freedom to advocate social and political action, were perfectly healthy within their context. It was, he said, a lack of health in the Administration that led to the necessity for the demonstrations.

After testifying as to his recollection of various events, Mario was strenuously cross-examined by Deputy District Attorney Lowell Jensen. Jensen tried to impeach the credibility of Mario's testimony by pointing up errors in his previous testimony about such things as the names recorded on his birth and baptismal certificates. He also tried to characterize him as a poor student by bringing out that he was down grade points and that he had failed a German class. Most importantly, having finished with "embarrassing" and otherwise insignificant questions, Jensen set about proving that Mario and the FSM had acted improperly and unlawfully from the very beginning and that the December 2 sit-in was the culmination of a long series of student breaches of conduct and law.

Mr. Jensen's cross-examination was so exhaustive that Defense attorney Leonard was able to open forum on redirect. He framed his questions in such a way that Mario was able to expound personal and FSM ideas and states-of-mind at length. Finally, on brief re-cross, Mr. Jensen tried to detract weight from what Mario had said. But his testimony, generally summarized in the opening paragraphs above, was on the record. Some of it, beginning with Mr. Leonard's direct examination, went as follows:

On October 5, Mario was told that he would not be able to speak at the noon rally that day because the Chancellor considered him a non-student without permission to be on campus. Professor Nathan Glazer circumvented the regulation and made it possible for Mario to appear by introducing him. At the rally various religious and faculty groups endorsed the students' views on advocacy and the solicitation of memberships and funds. Also, tables were set up that day to collect funds to pay for damages inflicted upon the police car during the October 1 and 2 demonstrations.

On October 14 Professor Arthur Ross appeared at an FSM Executive Committee meeting to say that he would like to act as an impartial mediator between the FSM and President Kerr. FSM members told Ross that they desired a reconstitution of the CCPA. As it stood, the committee was composed of twelve members, ten of whom had been appointed by Chancellor Strong. The FSM urged that it be expanded to seat eighteen members; that the constituency be composed of six representatives of the Administration, six faculty members appointed by the Academic Senate, and six students elected by the FSM Executive Committee. In addition, any committee convened by the Academic Senate would be acceptable to the FSM.

On November 4, Professor Cheit presented to the CCPA a faculty proposal concerning the kinds of jurisdiction to the University should have over student advocates of social and political action and the "time, place, and manner" of the solicitation of funds and memberships and the distribution of materials. This proposal was acceptable to the students and the faculty, but not to the Administration. Mr. Martin Meyerson wanted an amendment to read that the University would not protect those advocating unlawful off-campus activity, but this was deemed unacceptable by the students when it was presented to the FSM Executive Committee on November 7.

It was then that the students lifted their self-imposed moratorium and once again set up tables on campus.

Mario was one of the four students admitted to the November 20 Regents' meeting. He and the others were ushered into the press section and were not permitted to voice their opinions on the Heyman Committee Report to be voted on during the meeting. Mario testified that the Regents voted not to adopt the Heyman Committee recommendations. Instead, they designated selected areas on campus for the solicitation of funds and memberships and the advocacy of lawful off-campus activities.

At a rally on November 23, the Monday following the Regents' meeting, Vice Chancellor Searcy, Professor Reginald Zelnick, Michael Rossman, Steve Weisman, and Mario all spoke. After the rally Mario led a Sproul Hall sit-in in protest of the Regents' actions. The protestors remained in the building from 1-5 p.m.

On November 28, during the Thanksgiving recess, four students - Arthur Goldberg, Jackie Goldberg, Brian Turner, and Mario - received letters from Chancellor Strong instructing them to appear in connection with disciplinary action to be taken against them for their roles in the October 1 and 2 demonstrations.

Backed by the FSM, the students demanded the charges against them be dropped. Their position was that the alleged violations had occurred two months previous; that, due to the circumstances prevalent on campus, it was improper to punish them retroactively; and that, finally, such disciplinary action should not be enforced without first giving the students a hearing. They maintained that the Administration was acting upon a presumption of guilt and that its decision to discipline them was unreasonable, vindictive, and unjust.

The Administration refused to negotiate upon its decision. After a number of attempts at reaching a mutually-satisfactory agreement, or at least establishing a situation or a meeting which could potentially lead to such an agreement, the FSM resolved to resort to direct and dramatic action. The Executive Committee voted in favor of a motion proposing and detailing the sit-in. Mario and Suzanne Goldberg prepared a statement, composed of points the FSM wanted met by noon, December 2, which was sent to the Administration. A rally was called for noon, December 2. The Administration failed to respond to the communique, the rally was held, and the Sproul Hall sit-in was staged.

\* \* \* \* \*

Mr. Jensen's thorough cross-examination was too involved to treat summarily. In keeping with his general purposes, which were to impeach portions of Mario's testimony, detract from his credibility, and characterize him and the FSM as lawless, recalcitrant parties, he attempted to show that Mario had in some instances not told the truth and that he and the FSM had repeatedly and purposely broken University regulations and criminal laws.

He tried, among other things, to elicit from Mario a response to the effect that the tables were set up in deliberate violation of then-existing regulations. Mario answered that they were set up not to violate any regulations but rather to enable the students to continue those traditional activities which gave their groups access to the student body.

This reply was consistent with Mario's entire testimony on the subject of tactics. The FSM resorted to demonstrative methods because it found, while simultaneously being frustrated in its attempts to utilize "normal channels of negotiation," that they worked. The October 2 Agreement is an example of the

fruit of such action. Had the Administration been will and/or able to conduct itself as the governing body of a healthy university should, the FSM, were its goals then the same, would readily have made good on its ceaseless attempts to arrive at reasonable solutions reasonably.

Referring to the background of his arrest, Mr. Jensen asked Mario if Alex Hoffman had been able to enter Sproul Hall at any time during the evening of December 2. Mario said that he had, and that he had been to a Steering Committee meeting held in the building that night at 11 p.m. Testifying as to his arrest, Mario told Mr. Jensen that he had originally "gone limp" on the stairs because of the way in which the policeman was pushing him down and he had remained on the basement floor both out of anger and because this would effectively prolong the demonstration. It was for the latter reason that he had urged others to remain passive while being arrested. He felt that the police had no right to be in the building, and that, once they arrived, the protest logically extended to include them.

Near the end of the examination, Jensen read Chancellor Strong's statement delivered in Sproul Hall and, re-reading the line, "This assemblage has developed to such a point that the purpose and the work of the University have been materially impaired," asked Mario whether he had joined in the clapping and cheering which interrupted the statement at that point. Mario said that he had no recollection of having done so, but that he may have. Asked what his state of mind was when he heard the statement and the students' reaction, he said that it was in accordance with the cheering and clapping. Jensen then went on to the next question. Mario interrupted him, said that there was more than that to his state of mind, and asked if he could explain further. Jensen said that his answer had been sufficient, and quickly finished his cross-examination.

On re-direct, Mr. Leonard gave Mario an opportunity further to develop his state of mind at the time that Chancellor Strong was reading his announcement. Several of the lines were quoted by Leonard, who then asked Mario what his state of mind was with respect to each. Part of this testimony went as follows:

"The University has shown great restraint and patience in exercising its legitimate authority in order to allow every opportunity for expressing differing points of view." To this statement Mario answered that his state of mind included, on a cumulative basis, the knowledge that the police had twice been brought onto campus, that the Administration summarily suspended eight student without consulting them, let alone giving them a hearing, and that there were many other incidents which testified to the gross hypocrisy of Strong's claim.

"The University stands ready to engage in the established and accepted procedures for resolving difference of opinion." Once again, Mario listed a number of things that when towards making Strong's position a false one. Among those he mentioned were: that, prior to the beginning of the fall

semester, the University changed certain policies without consulting with the groups to be affected; that the students could discuss policy, but could not change it - except after picketing and all-night vigils; that the Regents consistently refused to meet with the students and never did so; that Kerr sent Professor Ross to consult with the students after October 2 but did not give him the power to change policy or even to effectively recommend changes; and that Strong said he had no power to dissolve the CCPA, even though the students pointed out that it was illegally and unjustly constituted, but nevertheless he did dissolve it at a later, convenient-to-him date.

The other main tack taken by Leonard was with regard to the various "actions" of the FSM, and of Mario personally, during the fall semester. By reading from the letter Mario and Suzanne had written just before the sit-in and sent to the Administration and then asking Mario what his state of mind was with respect to that part of it which dealt with direct action, Leonard led Mario into stating his frame of mind with respect to various major events during the semester. This served as a forum for certain issues vital to the case.

Finally, in an attempt to establish an objective referant framework within which the "reasonableness" of Mario's state of mind and the actions of the FSM could be shown, Leonard asked Mario whether, since the time of his arrest, he had learned of the December 3 and 8 faculty resolutions substantially supporting the FSM objectives and criticizing the Administration's conduct during the controversy. Mr. Jensen object to this line of questioning on the ground that what Mario learned after his arrest could have no possible bearing on his state of mind prior or up to the time of his arrest. Mr. Leonard argued that he in no way intended to show or imply that, but, rather, that the purpose of testifying to what happened after the arrests was to demonstrate the reasonableness of the students' positions and actions from the point of view of a mature and responsible group of men - the University professors. When the Judge sustained Jensen's objection, Leonard made an offer of proof by formally stating the significance of the professors' stands and reading the December 3 resolves and the December 8 resolutions of the Academic Senate into the record.

Mr. Jensen's re-cross -examination was brief. Saying he had only two questions, he tried to show that the aspects of his state of mind to which Mario testified on re-direct did not apply to his state of mind at the point when the sit-ins interrupted Chancellor Strong's announcement with clapping and cheering.

#### Testimony of Ronald Anastasi

Mario was followed to the stand by defendant Ron Anastasi, a junior in psychology who transferred to Berkeley from Worchester Polytechnic Institute in the fall of 1964. Ron testified that he first learned of the dispute over the collection of funds, solicitation of memberships, and advocacy of

off-campus action on the afternoon of September 30. Coming onto the second floor of Sproul Hall to file a petition, he met a friend who informed him that 300 students were sitting in the building at that time to protest the administrative ban on "off-campus" political activities. He left the building after filing his petition, but returned after dinner and remained in Sproul Hall until everyone went home at approximately two in the morning.

Ron was in Sproul Plaza on October 1 when a police car was brought in to remove Jack Weinberg, who had been manning a CORE table at which the solicitation of funds and memberships and the advocacy of off-campus activities were going on. He was one of the group which sat down around the car to keep it from taking Weinberg away. At about 6 p.m., he noticed that the crowd around the car had grown so large that people were having difficulty hearing those who were speaking from atop the car. He asked a speaker whether it would be a good idea to obtain sound-amplification equipment and the person said it would help. So he went out, as a self-appointed volunteer, and rented two loud-speakers, an amplifier, a microphone, and a battery.

On October 5, Ron attended a meeting of the Independent Students for Free Speech, a group of persons unaffiliated with any other campus political or social action group. Seven delegates, including Ron, were elected to represent the seven or eight hundred present, on the Executive Committee of the FSM. Subsequently, in the first week of November, Ron was elected to the FSM Steering Committee.

As one of the five silent observers in attendance at the CCPA meetings, Ron testified that all of Miss Aptheker's testimony about her meetings with Dean Kidner at the CCPA was accurate.

At the November 29 meeting of the Executive Committee, Ron was asked to contact President Kerr to see if he would meet with the representatives of the FSM concerning requests to be submitted to the President's office on Monday, November 30. These requests dealt primarily with the dismissal of charges against the students cited for their activities during the October 1 and 2 demonstration as well as with the revision of rules governing student political rights on campus.

Early on the morning of November 30, Ron called President Kerr's office. The secretary told him that he should call Vice President Bolton. He tried three times that day to do so, but each time the attempt ended with the secretary telling him that she had transmitted the message to Bolton and that Bolton would call him back. Bolton failed to return the calls. The following morning Ron finally reached him and requested that FSM representatives be allowed to meet with him. But Mr. Bolton said that he could not meet with the students, and did not suggest a future time when he could.

That was on December 1. At about 1 p.m. on December 2 Ron entered Sproul Hall. He had obtained sound equipment beforehand. In the building he served as a monitor, whose job it was to help maintain order.

Shortly after entering the building, he had a conversation with Lt. Chandler of the campus police, in which he asked him whether the students could open the windows on the second floor foyer. Lt. Chandler said they would have to check with the Superintendent of Buildings and Grounds. The Superintendent said that it was all right with him if it was all right with Lt. Chandler. Lt. Chandler agreed then to opening the windows. When Ron returned to the second floor foyer one window was already open and another was subsequently opened.

Later, at 5:30 p.m., and twice more before 7 p.m., Ron went down to the Campus Police Station in Sproul basement to check on rumors that arrests were about to take place. Each time Lt. Chandler denied the truth of the rumors. Finally, at 7 p.m., Ron asked if it would be all right for a student to periodically check with the police throughout the evening in order to eliminate the problem of new arrest rumors constantly cropping up. Lt. Chandler was receptive to this suggestion and from 7 to 11 p.m. checks were attended to by Stephanie Coontz.

At a Steering Committee meeting held in the building at about 11 p.m., someone announced that he had called President Kerr's home and that Mrs. Kerr had told him there would be no arrests in Sproul Hall that night.

Ron was arrested on the second floor some time after 9 a.m. on December 3. The arresting officer asked him if he wanted to accompany the police and Ron said, "I wish to continue exercising my constitutional rights." Two policemen then dragged him to the end of the hall, where two others took over and dragged him down the stairs into the basement.

When Defense attorney Malcolm Burnstein asked Ron why he had not accompanied the officer, Ron replied that he felt that he had a right to be in Sproul Hall. His intention was not to actively resist arrest. He knew that "going limp" was a tactic often used in civil rights demonstrations and did not consider it a form of resistance. He felt that sitting-in in Sproul Hall was morally justified and his subsequent actions were in fulfillment of that commitment.

On cross examination, Prosecuting attorney Dutton established that Ron had attended the Regents' meeting on November 20 at University Hall. Corroborating Mario's testimony on that subject, Ron testified that four students had appeared and been ushered into the press section, that they heard President Kerr read a prepared statement on the Heyman Committee report, that the Regents voted to accept the proposals without any discussion, and that after the meeting he and Mario had reported back to the students gathered on the lawn across the street.

Mr. Dutton asked Ron such questions as whether or not he had ever attended a Cal football game and what kind of sandwiches were served in Sproul Hall. More pertinently, he asked whether Ron had seen any other arrests take place

before he was arrested. Ron answered that he had. Then Mr. Dutton asked if most of the people he had observed were dragged out. or had they walked. Most, Ron testified, were dragged. On re-direct, Attorney Burnstein asked if any of the studems whom Ron had seen being dragged out struggled or squirmed. Ron said no.

### Testimony of Professor Reginald Zelnick

The last witness to appear this past week was Acting Assistant Professor of History, Reginald Zelnick. Mr. Zelnick was one of the faculty members who worked closely with the students during the fall 1964 semester and acted as a liason between them and the Administration when it appeared that there were no remaining channels of direct negotiation open to the students in their attempts to reach an understanding with the Administration .

Mr. Zelnick was present at the last two meetings of the CCPA before its November 7 dissolution. On November 10 he made his first attempt to contact the Administration and on the same night he actually met with most of the members of the FSM Steering Committee.

At this first meeting with the students, Zelnick presented a proposal which he and Professor Scheiner had drawn up as a possible solution to the dispute between the students and the Administration. It contained the suggestion that a legal test case of the advocacy ruling be made, with the understanding that the University would, in abiding by the judgment of the civil courts, refrain from prosecuting the students for their campus activities. The wording of the proposal was essentially that used at CCPA meetings, with the exception that now the students' 1st and 14th Amendment rights would not be infringed upon by University discipline. The students received the proposal with mixed reactions. Characterizing their responses, Zelnick employed the words "preliminary" and "probing."

At the conclusion of the meeting Zelnick promised to contact the Administration in order to present it with the proposal. He met with Professor Rosovsky in that capacity. Thereafter, Zelnick and other history professors met, made additions to the proposal, and re-submitted it to the students on November 11. This time it was enthusiastically received by both Mario Savio and Bettina Aptheker. It had been divided into two parts. The first remained substantially the same as before; the second suggested a faculty tribunal to hear the cases of students disciplined for off-campus advocacy. This tribunal would have final jurisdiction, and its decisions could only be appealed to the Chancellor for clemency. Additionally, the charged students would be granted the presumption of innocence and given the rights to challenge testimony, to have counsel, and not to have to testify against themselves.

Zelnick again met with an administrative representative. This time it was Assistant Vice President Fulton. Mr. Fulton appeared interested during the 90-minute meeting. He asked questions and took notes while Mr. Zelnick explained that the students were ready to accept the proposal if the Administration would.

At the November 23 rally, three days after the Regents had met and failed to incorporate any of the proposal into their resolutions, Professor Lawrence Levine of the History Department read a proposal to the assembly at Sproul Hall steps. This proposal was essentially a succinct restatement of the previous one. It expressed the faculty's dissatisfaction with the November 20 regential action and urged that the content of speech not be regulated. Also, it stated that the faculty tribunal would exist only to hear cases involving student discipline.

According to Mr. Zelnick, Mario Savio said that the proposal, as presented by Mr. Levine, would be acceptable to the students, but that the FSM would continue to argue its own platform until the Administration actually accepted the proposal. Miss Aptheker, too, indicated a willingness to accept the proposal as a solution to the dispute.

When Defense attorney Henry Elson tried to establish whether Jack Weinberg and other defendants who have not yet testified were receptive to the proposal, Prosecuting attorney Jensen objected on the ground that the answer to questions as to the state of mind of certain defendants would have to be corroborated by the testimony of those defendants. Judge Crittenden's decision to sustain the objection appeared to disregard the right of a defendant not to testify against himself.

Mr. Zelnick's testimony was still in progress when Court adjourned. He will return to the stand on Monday, May 23, at 10 a.m.

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FUNDS ARE NEEDED TO DEFRAY DEFENSE EXPENSES.

Please contribute to

Independent Faculty-Student Legal Fund, P.O. Box 785, Berkeley, Calif.

Those responsible for the DEFENDER:

Bettina Aptheker, Albert Letewka, Kathie Frank

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