

# The Defender

## Free Speech Trial Newsletter

May 30, 1965

TO ALL DEFENDANTS:

- 1) Beginning Tuesday June 1, COURT WILL COME TO ORDER AT 9 A.M. instead of at 10 a.m. This change is permanent. The schedule will otherwise remain the same, with the morning session ending at 12 and the afternoon session running from 2-4 p.m.
- 2) NO ONE MAY LEAVE THE AREA THIS SUMMER WITHOUT EXPRESS PERMISSION. Anyone wishing to do so must make a written request to Mal Burnstein 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.
- 3) The attendance problem will be aggravated by finals. IF YOU ARE ONE OF THE 155 CURRENTLY ON TRIAL, be sure you are in attendance at all court sessions except those during which you are taking an exam or working. In order to be excused for exams, you must submit your final schedule to the lawyers. OTHERWISE YOU WILL NOT BE EXCUSED. If you are not currently on trial, come to Court to help maintain the attendance during this difficult period. YOUR MINIMAL OBLIGATION IS TO ATTEND ONCE A WEEK.
- 4) We are still in desperate need of funds. PLEASE MAKE AN EFFORT TO SUBMIT A LIST OF POTENTIAL CONTRIBUTORS WITHIN THE NEXT WEEK to Albert Litewka, Lawyers' Committee, 2214 Grove Street, Berkeley 4.

### The past week in court

The defense called 11 witnesses, including University of California President Clark Kerr, to the stand this week. Beginning with Professor Reginald Zelnick, whose testimony carried over from May 20, and ending with defendant Herbert Henryson II, whose testimony will be continued on Tuesday, May 31, it further developed the states of mind of the defendants prior to and up until the time of their arrests. Additionally, it attempted to demonstrate the reasonableness of those states of mind and also to corroborate the testimony of earlier witnesses, particularly that given by defendants Goldberg, Aptheker, and Savio. Finally, it sought, to the extent allowed by the Court, to explore its theory that President Kerr, the person ultimately responsible for the University, had opposed the December 2 arrests but had been overruled by Governor Brown.

TO ALL DEFENDANTS: SEE PAGE NINE

### Testimony of Reginald Zelnick

Still under direct examination, Professor Zelnick testified to faculty support and sponsorship of various proposals which emerged as possible solutions to the controversy on campus last fall. He said that ten faculty members had sponsored the proposal presented at the November 23 noon rally by Professor Levine. This proposal, finally signed by 200 faculty members, expressed the faculty's dissatisfaction with the Regents' decision concerning advocacy on campus, stated its belief that the content of speech should not be regulated, and urged that a faculty tribunal be established to handle student discipline cases. At the Academic Senate meeting, 240 professors voted against a substitute motion, which was nevertheless entered and still won by 12 votes.

Cross-examined by Prosecuting attorney Lowell Jensen, Professor Zelnick was required to restate much of his direct testimony. Mr. Jensen questioned him about his role in the rally held across the street from University Hall on November 20, the day of the Regents' meeting. Zelnick said that he was present at the rally. He heard Steve Weisman and Martin Roysner read and criticize the motion, passed by the Regents, designating selected campus areas for the solicitation of funds and memberships and the advocacy of legal off-campus activities. He was also present when the students assembled voted on a proposed sit-in to take place immediately in University Hall. When Mr. Jensen asked him whether he had voted, Professor Zelnick replied: "I am not a student. I certainly did not vote." He added that he had in fact exhorted the students not to occupy the building.

Zelnick said that he knew of a Faculty Committee on Student Conduct and that this body was not appointed or elected by the Academic Senate but that, rather, it was appointed by, and advisory to, the Chancellor. He was also under the impression that this committee concentrated on routine student violations such as cheating and other academic misconduct and was not empowered to try political cases.

The last question put to Professor Zelnick was whether, to his knowledge, the students had ever arranged a proposed test case involving the constitutionality of campus rules of advocacy. He answered that he knew of no such case.

### Testimony of Henry Rosovsky

Dr. Rosovsky, Professor of Economics and History and Chairman of the Center for Japanese and Korean Studies, was examined on direct by Defense attorney Henry Elson. His testimony dealt mainly with the October 2 meeting of a group of 15 professors, including himself and Professors Schorsky, Glazer, Tussman and Smelser, with Chancellor Strong and Vice-Chancellor Lincoln Constance.

The meeting took place late on the afternoon of October 2, while the students were holding vigil around the police car for the second straight day. Its purpose was a discussion of the crisis and the consideration of a proposed

solution drawn up by Professor Glazer. Chancellor Strong refused to negotiate over the document, insisting that the students were engaging in illegal activity and that the problem would be resolved if they would simply desist.

Prosecuting attorney Edwin Meese made a number of objections to questions which Mr. Elson defended as preliminary to the impeachment of portions of Chancellor Strong's testimony. Specifically, Mr. Elson told the Court, he was seeking to impeach the Chancellor's statement that he always stood ready to negotiate with the students. On this point Judge Crittenden ruled that Strong, in stating his position, had negotiated, and that Professor Rosovsky's testimony in this area was corroborative rather than impeaching.

The meeting ended without any agreement having been reached. Professor Rosovsky reached President Kerr later in the afternoon and read him the proposed solution. Kerr thought it a good basis for negotiation and arranged a meeting with representatives of the demonstrators. It was held shortly thereafter and the original proposal was found mutually acceptable upon the alteration of some language in the first point and the addition of a sixth point.

Early on the morning of December 3 Professor Rosovsky and several colleagues tried to enter Sproul Hall, but their way was barred by policemen.

#### Testimony of Walter Herbert

Mr. Herbert is a campus religious worker who acted as a liaison between the students and administrative officials. On November 10 he met with Vice-President Bolton concerning the disturbances on campus. Afterwards, he met with Mario Savio, Jack Weinberg, and Steve Weisman and arranged a meeting between them and Bolton to be held in his office on November 16. Just before it was to take place, Mr. Bolton called up to say that he could not attend. Mr. Weinberg and Mr. Weisman were both in Herbert's office at the time. After this, Mr. Herbert became an intermediary between the FSM Steering and Executive Committees and the Administration.

On November 20 Mr. Herbert brought documents dealing with the Intentions and History of the FSM to Mr. David Fulton for distribution at the Regents' meeting that day. He attended the entire meeting and observed no reference whatsoever to the documents.

On November 21 he attended an FSM meeting and, relating impressions of the Regents' meeting and the FSM gathering, told the students he felt as if he "was looking into a submarine at people in a different world."

On the morning of November 22 Mr. Herbert and several members of the campus ministry met with Chancellor Strong. Subsequently, at another FSM meeting, he told the students that Chancellor Strong had responded to his proposal for communication by asking his secretary whether there had been any student requests for appointments with him. The secretary said there had not.

Strong also said that the students' material had been handed out at the Regents' meeting and that the subject of such communications was not worth discussing.

Under cross-examination, Mr. Herbert emphasized his feeling that the resolution passed on November 20 by the Regents did not satisfactorily deal with the students' requests.

#### Testimony of Philip Kamornick

With the exception of President Kerr, all the witnesses to appear after Mr. Herbert were defendants. The first of these, Mr. Kamornick, testified, in the same general manner that those after him did, to his state of mind up until his arrest and to the manner in which he was arrested.

Mr. Kamornick is a senior in philosophy. His state of mind was informed by the rallies held from mid-September until December 2, articles which appeared in the Daily Californian during that period, and conversations with other students and faculty members.

Although he was not a member of any campus or off-campus club in September, Mr. Kamornick thought that the ban on tables was unfair. He cited the false pretenses under which it was published and Dean Towle's unwillingness to deal meaningfully with complaints about it as sources of his dissatisfaction. He felt that the traditional atmosphere of freedom of expression on the campus was deteriorating. Also, he was bothered by the hypocrisy of Chancellor Strong's position, shortly after the University came out in favor of Proposition 2, that the students could not advocate opinions on specific political issues.

When he was placed under arrest, Philip asked for a lawyer. He was immediately grabbed and pulled down the stairs from the second floor to the basement by the shoulders.

#### Testimony of Mark Hardin

Mr. Hardin is a sophomore in political science. Testifying as to the evolution of his state of mind, he said he read in the Daily Californian that four students were being disciplined for their roles in the October 1 and 2 demonstrations and thought that they were being singled out for acts which had been participated in by many. He further said that he thought students should be able to speak anywhere about anything, as long as doing so was not in violation of the law and did not impair the functioning of the University. Making a distinction between suppression and regulatory control, he spoke of his fear that the Regental resolution of November 20 was designed to be potentially suppressive.

Mark "went limp" during parts of his arrest. When he walked, a transporting officer taunted him for not having the courage of his convictions.

### Testimony of Deborah Rossman

Miss Rossman, a Regents' Scholar and Phi Beta Kappa member, is a junior with a field major in the humanities. In the fall of 1964 she was a member of Campus Women for Peace and Hillel. Besides reading the Daily Californian, attending rallies, and speaking with friends, she also picketed, attended vigils, signed petitions, sat-in on Sproul Hall twice before December 2, and was one of those surrounding the police car on October 1 and 2.

As a result of these involvements, she told the Court, she was upset about the disciplinary action taken by the Administration against four students for "things we were all involved in" on October 1 and 2. She entered and remained in Sproul Hall on December 2 and 3 to embarrass the faculty into making the student struggle for political freedom on campus their struggle as well and also to express her dissatisfaction with the Administration for its unjust punishment of students without consulting with the organizations concerned.

Cross-examined by Mr. Meese, Miss Rossman testified that she had never attended an FSM Executive or Steering Committee meeting but that she had written that section of the Rossman Report dealing with Campus Women for Peace. When Mr. Meese asked her whether she "went limp" in order to prolong the arrests, she answered that she did not consider the arrests a prolongation of the protest because she saw people being removed in rapid process.

### Testimony of Robert Greenberg

Mr. Greenberg is a sixth-year graduate student in English and an Associate in Subject A. He took part in the formation of the Graduate Coordinating Committee (GCC), an ad-hoc committee of graduate students interested in and sympathetic with the FSM. He also wrote the chapter in the Rossman Report which treats the history of the loyalty oath controversy on the Berkeley campus. His research in connection with this assignment influenced his frame of mind with respect to the Administration.

Bob felt that the Sproul Hall sit-in was an acceptable and worthwhile means of protesting against the Administration for the way in which it mistreated the students and perpetrated wrongs on the University itself. As a graduate student, a faculty member, and a long-time resident of Berkeley, he felt that he was called upon to participate in the demonstration. "The members of the University," he said, "have a moral obligation to express what they feel is outside pressure on an institution." He cited William Knowland, the PG&E, and various groups with agricultural interests as examples of parties who had exerted unhealthy outside pressure on the University.

Before he was actually placed under arrest on the third floor of Sproul Hall, a police officer grabbed him and dragged him to the end of the hallway. Bob remained sitting on the floor because he felt it was not proper to be dragged down the hall prior to being charged and placed under arrest and also because

he was arrested for trespassing, after having been in the building all night, at a time when it was legally permissible to occupy it.

### Testimony of Clark Kerr

Dr. Kerr took the stand on the afternoon of Tuesday, May 25. Defense attorney Stanley Golde tried to establish him as a hostile witness and thereby obtain permission to cross-examine him. In support of the motion, he cited an analogous civil case and the affidavit which had been signed by Kerr and presented before the Court at an earlier date. This statement, read by Regents' counsel John Sparrow, argued that the subpoena on Kerr be quashed and that, in essence, the defendants were guilty of all charges pending. Despite this, Judge Crittenden ruled against the hostility motion on the basis that to his knowledge there was no criminal case authority in support of such a procedure. Mr. Golde then conducted a brief direct examination.

Kerr testified to his knowledge of Dean Katherine Towle's letter banning traditional table activities. The letter was sent to student leaders and faculty advisors of the groups involved on September 14. But Kerr was in the Orient at that time and did not hear of it or see it until his return several days later. His reaction to it involved several reservations. He felt that it was too restrictive and, more importantly, that it had been handed down without "adequate consultation" with appropriate faculty members and student representatives.

On October 2, the second day of the rally around the police car, President Kerr was in San Francisco. He rushed back to Berkeley late in the afternoon to keep a five o'clock appointment with student leaders of the demonstration. The meeting, at which a number of faculty members who were working on a peaceful solution to the crisis were also in attendance, resulted in the negotiation of the October 2 Agreement. While discussion was still in progress, Kerr sent Vice-President Bolton out at least twice to speak with the police. "I asked," Kerr testified, "that law enforcement officers be asked to hold in abeyance any action pending conclusion of discussions."

The President said that he had never gone to Sproul Hall on either the 2nd or 3rd of December. He spoke with Governor Brown twice on the evening of December 2. In between these conversations, which took place between 10 and 11 p.m., he sent Vice-President Bolton to the campus to speak with Chancellor Strong. Kerr also called Bolton while he was at Strong's office and gave him "some additional information." When Mr. Golde asked for the contents of the various conversations in which Kerr engaged, Mr. Jensen objected on the ground of hearsay. The Judge upheld the objections.

This limitation foreclosed any possibility of proving to the Court the defense theory that Kerr had decided against arrests being made that night, but that he had been overruled by Governor Brown. According to this reconstruction of events, Kerr sent Bolton to tell Strong that the arrests should not take place.

He then received a second phone call from Governor Brown, who demanded the arrests. Bound to this order, Kerr called Bolton at Strong's office, informed him of the latest development, and told him to relate the news to Strong.

In cross-examining Dr. Kerr, Mr. Jensen in some respects helped the defense along. He asked Kerr about meetings and information which had been testified to previously by Bettina Aptheker and Mario Savio. Kerr's testimony on these matters corroborated that of the defendants.

Jensen dwelled upon the changed and adjustments the Administration made in University regulations in an attempt to handle the controversy in a just and satisfactory manner. The purpose of this line of questioning was to show that the University made substantial changes in the September 14 policy, that the students were given everything they asked for, and that the sit-in was therefore unnecessary. Dr. Kerr answered questions on this subject by saying, as he had on direct examination, that there were three major policy shifts instituted during the semester in an attempt to satisfy the students. He could not remember the exact dates or the specific succession of the policies.

#### Testimony of Marilyn Milligan

Dr. Milligan is a second-year post-doctoral fellow in zoology. She was not a member of any campus group in the fall of 1964 and did not participate in many campus demonstrations because she was busy with laboratory work and field trips. She did, however, know what was happening on campus, and participated in the sit-in because she felt it was a necessary and viable form of student protest.

In testifying to her state of mind, she said that no one has ever yet figured out how to make a perfect society, but that every person should have the right to work towards this end. The exploration and implementation of ideas are vital to the improvement of a society. The University is the one place best suited to accommodate these activities and should not, in keeping with its fundamental nature, exercise any restrictions upon the conception and expression of ideas.

She testified to her feeling that the Administration had violated the Agreement of October 2 by disciplining 8 students without giving them a fair trial. Also, she connected the Sproul Hall sit-in with the civil rights movement and said that those committed to the fight for civil rights often resorted to civil disobedience because that was the only way they could make themselves heard.

#### Testimony of Lee Goldblatt

Miss Goldblatt, a senior in anthropology and an honors student, was the last witness to appear this week. She testified that she was bothered by the fact that the administration had established itself as both sole accuser and judge in the disciplining of students politically active during the fall. Of course, all

the events which constituted the controversy had a cumulative effect upon her state of mind as she entered Sproul Hall.

When she was arrested, the police officer asked Lee whether she wished to walk out like a lady or be carried. She said she would like to be carried out like a lady if it was necessary. She "went limp" to protest the manner in which the arrests were being carried out as well as the fact that police had been called onto campus in the first place. She felt that the significant issues were extra-legal and that they could not and should not have been referred to the police.

On cross-examination, Mr. Meese asked Lee whether she thought the advocacy of burning down a building should be permitted on campus. This was an attempt to counter her direct testimony to the effect that the University should have no power to regulate speech. Lee answered that speech advocating(or advocative of) burning down a campus building should not be permitted, but that the advocacy of off-campus political and social action certainly should.

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