

TO ALL DEFENDANTS:

1. YOUR ATTENDANCE IN COURT IS IMPORTANT TO OUR CASE. Many of you have shirked the responsibility of coming. This has caused problems with the Judge and District Attorneys by:

a) jeopardizing the stipulated right of defendants currently on trial to attend classes and/or go to work at such times when the Court is in session;

b) serving to weaken our constitutional defense insofar as it has been taken as a detrimental reflection on our motivation;

c) aggravating our lawyers, not only in these ways but also insofar as it is incalculably more difficult to put on an effective case without a live audience.

Now that we are presenting our case, there is no excuse for your not coming whenever you are free. If you feel no other obligations, you still have one to the lawyers - who are giving their days and nights in your behalf.

2. WE ARE IN DESPERATE NEED OF FUNDS. Please do what you can to solicit for the defense. And SEND IN THE FORM WHICH WAS STAPLED ON TO THE BACK OF THE APRIL 18 DEFENDER, requesting the names and addresses of potential contributors. IF YOU HAVE LOST THE FORM, just send a list. The persons or organizations whose names you give us will be mailed a letter briefly explaining the FSM and asking for financial support.

PLEASE MAIL YOUR LIST TODAY. to Lawyers' Committee  
2214 Grove Street, Berkeley.

# The Defender

## Free Speech Trial Newsletter

May 9, 1965

On the morning of April 27, the prosecution rested. Court adjourned until Monday, May 3, at which time the defense opened its case. Calling Deputy District Attorney Edwin Meese III as its first witness, it set out to demonstrate that the students who entered Sproul Hall on December 2 were seeking redress of certain reasonable and just grievances after all other channels of communication between students and administrators had been closed.

The defense intends to prove that the sit-in was a lawful assembly conducted in an orderly and peaceful manner. It hopes to show that the University administration had no intention of arresting the students until Governor Brown issued an order to that effect late in the evening of December 2. Finally, to the extent allowed by the Court, it will try to recount the events of the fall semester - from the initial ban on political activities through all the fruitless negotiations to the stage at which the administration refused to negotiate - which culminated in the sit-in demonstration. A retelling of these events will go to establish the "state of mind" of the defendants, the "reasonableness" of that state of mind, and the legitimacy of that reasonableness when the defendants entered Sproul Hall and refused to leave until they were arrested.

Our lawyers encountered various difficulties in attempting to put witnesses who might corroborate their theories on the stand. On Tuesday, May 4, they sought a subpoena for Governor Brown on the grounds that his testimony could prove crucial to an understanding of the events immediately preceding the order to arrest. The Governor's counsel contested the subpoena, arguing that the Governor had no legal or lawful knowledge pertaining to the case and that his testimony would be irrelevant and immaterial. Judge Crittenden agreed and quashed the subpoena.

The following day every major Bay Area newspaper, as well as the radio and television media, reported the Governor as having substantially stated, during a press conference, that the arrests he had ordered had a "salutory effect" and that the students, by demonstrating the Sproul Hall, had been in violation of the law. He explicitly declared that they had trespassed on private property.

These prejudicial remarks, made while the trial was still in progress, led the defense attorneys to make a motion for mistrial. Judge Crittenden denied the motion, saying he had no knowledge of the Governor's remarks prior to Mr.

Leonard's reading of them to the Court and that he had therefore in no way been prejudiced by them. In asserting his objectivity, he stated that he had purposely avoided reading newspaper accounts of the trial since its beginning, that he never listened to his home radio, that he could not listen to his car radio even if he wanted to because the battery was too low, and that the only television programs that his children watched were "UNCLE" and "Gilligan's Island," neither of which had so far dealt with the sit-in. Defense attorney Leonard argued that although the defendants had waived their rights to trial by jury, they had not waived their rights to due process and a fair trial. He pointed out that the Governor's remarks prejudiced the public, and asserted that statements of this nature by high public officials should be stopped. The Judge did not change his ruling.

Things looked brighter on Thursday, May 6. The defense requested a subpoena for University of California President Clark Kerr. This was contested by the Regents' counsel, John Sparrow, who plead that the President's testimony would not be relevant or material to the trial. However, Judge Crittenden ruled that his testimony might well be relevant and, after stating that the possibility of relevance was sufficient cause for permitting testimony, denied the motion to quash.

\* \* \* \* \*

#### Testimony of Mr. Meese

The defense opened its case on Monday, May 3, by calling Mr. Edwin Meese III, Deputy District Attorney, to the stand. Mr. Meese testified that he spoke with Governor Brown on the phone for a minute or two on December 2 at about 10:50 p.m. When he took the phone, the conversation was already in progress, so he could not say who had initiated it. When Mr. Leonard, defense attorney, asked what Mr. Meese said to the Governor, Mr. Jensen objected on the ground of immateriality. Judge Crittenden sustained the objection. Then Mr. Meese was excused subject to recall for further testimony.

#### Testimony of Mr. Bolton

Earl Bolton, administrative vice-president of the University of California, was called as the second witness for the defense to testify about a meeting which took place at the Hilton Inn at 6:30 on December 2, and which was attended by President Kerr, Vice-President Bolton, and Regents Meyer,

McLaughlin, and Carter. Mr. Bernstein's questions about what decisions or plans were made at that meeting met with Mr. Meese's objections of immateriality. The objection was sustained; Mr. Bolton, too, was excused subject to recall, should other evidence arise that would make the answer to the question material to individual defendants.

### Testimony of Miss Robb

Testimony to the state of President Emeritus Robert Gordon Sproul's office in Sproul Hall after the December 2 sit-in was given by Agnes Robb, Dr. Sproul's long-time secretary. She testified that she had gone to lunch at 12:15 p.m. on December 2, before the sit-in began. When she returned at 3 p.m., she went immediately back to her office.

Mr. Elson: Were you able to return to your office?

Miss Robb: Yes.

Mr. Elson: Did you meet with any difficulty in returning to your office?

Miss Robb: No.

Mr. Elson: Please tell us what the condition of the hall was.

Miss Robb: I noticed some confusion, but no special noise.

Mr. Elson: What did you do after you returned to your office?

Miss Robb: I stayed in my office doing my work until a little after 5pm.

Miss Robb testified that the next day, Dec. 3, Sproul Hall was closed, but Mr. Haffner of the Public Information Office called her at home to say that Dr. Sproul's office had been broken into. When Miss Robb returned to work Friday, she and Mr. Jones from the Graduate Division Office entered Dr. Sproul's office, but found no evidence of vandalism. When asked what her desk usually looks like she replied, "That's an embarrassing question - I'm noted for a messy desk."

### Testimony of Dean Katherine Towle

Miss Katherine Towle was called to the stand Monday afternoon, May 3. Since July, 1961, Miss Towle's job, Dean of Students on the Berkeley campus, has entailed personal counseling with students, student activities, and enforcing the University Rules of Conduct.

All of Miss Towle's testimony dealt with actual negotiations or attempts at negotiations between students and herself beginning September 17, 1964, after letters dated September 14 were sent to several student "recognized off-campus" groups, informing them of an extension of the previously existing rules concerning on-campus solicitation of members, collection of funds, and advocacy of off-campus activity. The rule was now extended to groups setting up tables at Telegraph and Bancroft. Miss Towle testified that there was no prior consultation with students when rules were extended to Telegraph and Bancroft.

On September 21, at a second meeting with Dean Towle, some of the same people who had been at the first meeting, plus news media representatives, and Mr. Pope, a representative of Vice-Chancellor Sherrif's office, Dean Towle announced that the rule had been amended to read that groups could set up tables in the Telegraph-Bancroft area, but that they still could not collect funds or advocate a position on any given issue. Only "informational" leaflets could be distributed.

Dean Towle also held a meeting with several students and two attorneys on the afternoon of December 2, after the sit-in in Sproul Hall had begun. At this meeting Dean Towle and the students were discussing the matter of table violations and disciplinary action to be taken against those organizations for violating University regulations. The meeting had been arranged before the sit-in was contemplated. Mr. Bernstein asked Dean Towle if there was any discussion about the sit-in, whereupon Dean Towle answered, "Someone hinted at discussing the sit-in, but we didn't go on with it, and that was that."

In cross-examination, the prosecution tried to show that by November 20, the Administration had made substantial concessions. Dean Towle testified, in essence, that changes had been made, but she pointed to the main area of dispute concerning the advocacy of off-campus political and social action.

#### Testimony of Jackie Goldberg

Jackie Goldberg, fourth witness for the defense, was on the stand from the afternoon of May 4 to the conclusion of the May 6 session. The substance of her testimony was a history of the campus crisis and attempted negotiations from September 14 until October 13, 1964.

Representing Campus Women for Peace, Jackie was a spokesman for the informal collection of political action groups which eventually became the FSM. She continued as a member of the FSM Steering Committee until mid-October.

The relevancy of this type of testimony was challenged by the prosecution. The defense was allowed to proceed on the grounds that the events preceding the December sit-in were relevant to the state of mind of each defendant during the occupation of Sproul Hall. Jackie, although an arrestee, is not one of the 154 now on trial. Therefore, each discussion or event related by her had to be linked to someone in the current trial. Art Goldberg, Sandor Fuchs, Beth Stapleton, Mario Savio, and Brian Turner were most frequently mentioned in this context.

In addition to the "state of mind" justification, the defense has stated that this testimony goes to prove the real and reasonable nature of the grievances which were ultimately expressed in the Sproul Hall sit in. This avenue of argument, they have indicated, is relevant to the Constitutional defense.

Emphasis in the cross-examination by the prosecuting attorney Jensen was upon the actual breaking of University rules and the resulting confrontations with the administration. Jackie said there was no intent in breaking rules beyond the continuation of activities which were considered essential to the effective survival of the groups. Placement of tables in new areas was an attempt to impress upon the administration the urgent desire of the students for negotiations.

Jackie testified that on October 1 she went to the door of the Dean's Office in Sproul Hall. She was told by a policeman that if she came any further and attempted to enter the office she would be charged with assault. Jackie and other students then sat down in front of the door to the office.

Jackie was asked to testify concerning her activities in Sproul Hall on December 2 and 3. After consultation with counsel, she waived her Fifth Amendment rights and answered questions of the prosecution. To one of Mr. Jensen's inquiries, Jackie replied that she did not hear Lt. Chandler's 6:45 p.m. announcement that the building was to be closed; she did not, in fact, know of the locking of the doors until approximately 9 p.m.

#### F U N D S ARE STILL NEEDED TO DEFRAY DEFENSE EXPENSES

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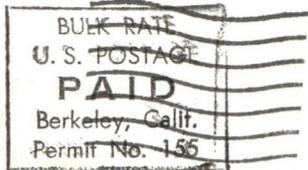
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