

# POSITION OF THE FREE SPEECH MOVEMENT ON THE OBSCENITY CASES.

"... issues of free speech in a democracy often arise out of marginal cases. We do not decide whether an issue has been raised by pointing to all the free speech that abounds. The hard case and the forlorn sect may give us trouble beyond their due, but they also summon us to reaffirm our fundamental commitments."

Professor Philip Selznick

Commentary, March 1965

"The President and the Chancellor, who had, of course, immediately resigned, selflessly withdrew their resignations. 'The issue,' they said, 'is not whether Sam should be strung up by the thumbs. We all agree to that. But simple justice requires we hold the proper hearings before we string him up by the thumbs.'"

Arthur Hoppe

Chronicle, March 17, 1965

Berkeley students must be concerned with at least two important issues which may well be lost amid the colorful rhetoric of this latest crisis over alleged obscenity on campus: (1) protection of the students' rights to due process, and (2) protection of the December 8th Resolutions of the Academic Senate. Both precious safeguards could soon be lost if we fail to resist the pressures which prominent individuals and public bodies are exerting to make the forthcoming hearings of the Ad hoc Committee for Student Discipline a rubber stamp for predetermined punishments. President Kerr, a well-known civil libertarian who judged the cited students to have "perverted freedom into license for hard-core pornography," has stated: "Proceedings are now under way to discipline the students involved in an orderly and prompt way ..." A majority of the State Assembly has called for expulsions.

But surely President Kerr has it wrong. The purpose of the proceedings which begin this afternoon is not to discipline the students, but to determine whether they should be disciplined. Only if this is first determined in a fair hearing can there be any responsible talk - also in committee - of appropriate punishments. It may well turn out that University discipline in this case would constitute a violation of the December 8th Resolutions of the Academic Senate. For such discipline could constitute a restriction by the University of the content of speech. Or it could turn out that such discipline would be a restriction upon the form of expression greater than any necessary "to prevent interference with the normal functions of the University." Finally, we may discover there is no University regulation existing prior to the time of the alleged violations under which the students could be punished for the only relevant policy thus far cited by the administration, a prohibition against "unbecoming behavior," is unconstitutionally vague.

Some may argue that the December 8th Resolutions are not applicable in this case because they arose in the context of student political activity and were meant to protect political speech and organization. But surely social criticism and protest of unjust arrest is political speech. This is what the cited students claim they were doing. And Professor Selznick, on the floor of the Academic Senate, acknowledged that genuine social criticism was involved and warned us all not to make scapegoats of these students. Furthermore, even if a case arose where a genuine consensus existed that a given speech was not political, we could nevertheless hardly leave it to the administration to judge so officially. No test can be applied by the University to determine when speech is or is not political. Only courts of law are competent to make such judgements. For if we should once permit such a test, we would soon thereafter find that what correctly represented itself as legitimate civil-rights advocacy of civil disobedience was being judged by the administration to be the advocacy of vandalism, and therefore not entitled to the protection of the December 8th Resolutions.

The precedents we set in this case of alleged obscenity will be applicable in any subsequent political case. If the December 8th Resolutions have any meaning at all, then they must apply to all speech, not just to what the current intensity of right-wing political pressure will permit the administration to judge "political" speech. (See December 8th Resolutions below.)

As a result of a careful study of the December 8th Resolutions, and of a discussion with legal counsel of the peculiarities of this case, we can list the following as the minimum protection necessary to safeguard both due process and the Resolutions:

1. That there be no hearings of the Ad hoc Committee until after the trials now pending in the courts, so that (a) the opinions of jurymen not be influenced by the University proceedings, (b) the 5th Amendment rights of the students not be endangered by possible subpoena of the transcript of University hearings, and (c) sufficient time be provided for the students to acquire counsel to represent them in the University hearings (they now have only temporary representation) and for counsel to prepare the case adequately.
2. That the general procedures of the Ad hoc Committee guarantee at least as adequate safeguards of due process as did the Heyman Committee of last semester. This includes, of course, the requirement that the hearings be open to the public.
3. That the Ad hoc Committee (or the Chancellor) guarantee publically that the December 8th mandate will be binding upon these proceedings: that the Committee will not regulate the content of speech and that it will not regulate the form of speech beyond the regulation of form permissible under the Resolutions. That, furthermore, the Committee (or the Chancellor) guarantee that evidence supporting the contention that the Committee is violating the Resolutions will be admissible (e.g., evidence to show that the University regulations invoked, either as written or as applied, violate the Resolutions).
4. That the Ad hoc Committee (or the Chancellor) guarantee that no unconstitutional vague regulation will be invoked against the students; and that the Committee (or the Chancellor) guarantee that evidence supporting the contention that regulations invoked are unconstitutionally vague will be admissible.
5. That whoever may decide what punishment students receive hear all the evidence and argument presented, so that we may minimize the likelihood of repeating the scandal of the Heyman Committee and the Griffin case, where the reports of advisory disciplinary committees were rejected by University officials.

Furthermore, we must explore fully the possibility of "public defenders" and transcripts being provided at University expense. Fees for counsel are high, and the expense of transcripts for use in subsequent appeal to the external judiciary could hardly be borne by students. Such appeals would surely take place if convictions resulted in First Amendment cases such as the one before us now.

The protection of the freedoms we fought for last semester depend upon the establishment of favorable precedents in this case. We could lose all by not providing an adequate defense. Money is desperately needed to provide counsel. Please send contributions to FSM at 2904 Adeline, Berkeley.

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Propositions introduced by the Committee on Academic Freedom at the December 8th meeting of the Berkeley Division of the Academic Senate:

- (The following motion was presented to the Berkeley Division of the Academic Senate by Professor Garbarino, Chairman of the Committee on Academic Freedom. The motion passed without amendment by a vote of 814 to 115.)
2. That the time, place, and manner of conducting political activity on the campus shall be subject to reasonable regulation to prevent interference with the normal functions of the University; that the regulations now in effect for this purpose shall remain in effect provisionally pending a future report of the committee on Academic Freedom concerning the minimal regulations necessary.
  3. That the content of speech or advocacy should not be restricted by the University. Off-campus student political activities shall not be subject to University regulations. On-campus advocacy or organization of such activities shall be subject only to such limitations as may be imposed under section 2.