

Berkeley, California  
February 2, 1965

Dear Faculty Member:

On Sunday, January 17, an informal meeting of members of the Berkeley faculty was held to discuss methods of improving communication within the University community. As a result of discussions arising out of this meeting it was concluded that an organization devoted to the elucidation of a wide range of academic and educational problems could add an important element of strength to the University in these times of change and reform. This organization will be called the Faculty Forum. Among its various activities (to be outlined in a later communication) will be the periodic distribution to the faculty of documents and other printed materials relating to the current problems of the University. The purpose of such distributions will be to inform the faculty more fully of various points of view on issues confronting the University, with the end of stimulating thought and mature discussion.

The first three of these informational distributions are attached, in order of date. It should be emphasized that the materials circulated herewith do not emanate from any discussions or collective effort of the Forum, nor do they represent the official position of its members; THEY REFLECT THE OPINIONS OF THEIR AUTHOR, OR AUTHORS, ALONE.

/s/ Delmar Brown (History), Chairman  
Burton Moyer (Physics), Vice Chairman  
Nathan Glazer (Sociology), Forum Chairman  
Paul Seabury (Political Science),  
Discussion Chairman

Attached:

1. Stenographic record of a speech of Professor Nathan Glazer, Sociology, delivered in a panel discussion on January 9, 1965.
2. "A Suggestion for Dismissal" submitted by Professor Jacobus ten Broek, Political Science, and others to the Municipal Court of the Berkeley-Albany Judicial District on January 21, 1965, and rejected by the Court on January 26, 1965.
3. An "Open Letter to Professor J. ten Broek" by Professor David Louisell, Law School, of January 23, 1965.
4. Letter of Professor George C. Pimentel, Chemistry, January 22, 1965.

SPEECH OF NATHAN GLAZER, SOCIOLOGY  
January 9, 1965

There have been at least three kinds of issues in the Free Speech Controversy:

First have been the issues as to the proper limits of political activity or the preparation of political activity on a university campus.

Second have been the issues as to the constitution of the university: the questions as to how much control, over what kinds of activities, should be vested in the Regents, the President, the Chancellor, the faculty, the students.

Third have been the issues as to what measures, what kinds of activities, what kinds of pressures, should be used in the dispute over the issues that fall into the first two categories.

I have views on all three sets of issues. But I have felt from the outset, and increasingly as the controversy went on, that the heart of the controversy was really over the question of means, of tactics; and not over the question of ends. I will confess I am less certain over my views on the first two sets of issues--the limits of political activity on a campus and the constitution of a university--than I am over the third set of issues--the legitimacy of the means by which one presses one's views.

My views on this are very simple. In a functioning democracy no one has the right to resort to force to press an argument. On a university campus, on which free speech prevails, no one has the right to resort to force either. I do not think a political democracy and a university are the same thing. I think there are matters in a university which cannot be determined by majority vote of its elements, for the simple reasons that inevitably and necessarily a university involves two classes, at least, with very different rights and privileges. By its very nature, one must assume that in a university one of these classes has greater rights and privileges and authorities than the other.

This is not to say a university is a dictatorship or must be a dictatorship. But it is to say that the mechanisms whereby change comes about cannot be the mechanisms whereby change comes about in a political democracy. There are no elections in which all the elements participate under the rule: one man one vote. Nor do I think universities in general would be improved if they operated under such a system.

Now to specifics:

The leaders of the FSM argued from the beginning that there was only one way in which they could make their voice heard: To introduce such disruption in the workings of the university that it would have no choice, if it wished to continue its work, but to accept their views.

One of their greatest successes was to convince both thousands of students and vast numbers of liberals in the community that we had on the campus of the University of California one of those extreme situations which justifies abandoning the dependence on argument and due process. The only alternative, according to this line, was to resort to the creation of circumstances in which



argument and discussion becomes meaningless. In such circumstances, the opposition is left with the alternatives of either giving in or itself resorting to force. (This is, of course, the chief argument against the resort to force in the first place, and the reasons why the grounds that justify such a resort have to be examined very carefully).

I do not think this "final resort" argument was valid in this case. I am relatively new on this campus. Yet I am aware that over a period of ten or fifteen years there has been a steady broadening of the kinds of political activities that are legitimate on this campus. I have known some of the former students involved in broadening these activities. They were on the whole leftists. If they found it unnecessary to resort to the tactics of force and disruption, I saw no reason why today's student radicals should find it necessary. Was the regime of President Sproul and Chancellor Kerr I asked myself--and I would ask you to ask yourselves--so much more liberal than that of President Kerr and Chancellor Strong that new tactics of disruption were required to continue the expansion of the limits of political action on the campus? I did not think so.

A second point convinced me of the illegitimacy of the resort to these tactics. This was the fact that they were used again and again prematurely and when alternatives existed.

Let me give you a number of examples from the very beginning. Students had set up tables and collected money in defiance of the new regulations. This to my mind was a reasonable way of continuing the discussion. I did not disapprove of this, and I believe this is not inconsistent with my views as to the means that may be used in conducting a dispute in a university. The university is not a democracy, as I have said. Ingenuity is required in conducting a discussion. To collect money means to be cited. To be cited means to have an argument with the deans, with the faculty committee on student conduct, with the Chancellor and the President and the Regents. To conduct a discussion means to bring forth arguments of such power that in the national setting of a university some concession is necessary to good arguments. Such concessions had occurred before. They would occur again. But what happened when the students were cited? I read from the report from Chancellor Strong to the faculty--I assume the facts are correct:

"At 3 o'clock that afternoon some 300 to 400 students moved into the second floor of Sproul Hall and Mario Savio announced that all of them acknowledged violating University regulations in the same manner as those students who had been instructed to make appointments with the Dean of Students, and they all wanted similar appointments. The Dean of Men declared that he was then concerned only with observed violations, and if students wanted appointments they could leave their names and he would determine if and when such appointments could be made. He...requested that the crowd disperse, since he had scheduled a meeting of the leaders of the student organizations and their advisers to discuss the problem at 4 o'clock. Savio responded that the group would not leave unless they were guaranteed that the same disciplinary action would be meted to all there. Unable to make such guarantees, the Dean of Men again asked the group to leave, and later announced that since, in the opinion of the administration and some of the advisers of the student groups who had come to attend the 4:00 p.m. meeting, the environment was not conducive to

reasonable discussion, the meeting was cancelled. He again urged (the students who had been cited) to enter the office to discuss offences noted earlier. The indicated students did not appear for interviews, and the group remained in Sproul Hall until about 2:40 Thursday morning."

Were Savio's actions at that time calculated to conduct a reasonable discussion, or to conclude it with a show of force?

I will give a second example from the action taken after the Regents' statement of November 20th, which asserted that the campus could not be used for illegal action. I think this was a very difficult position to argue against, but leaving this aside, the FSM felt it was a point of critical substance and importance. I have never understood why at that time they did not take opportunity of what to me was a great victory for their movement, a great expansion of the bounds of political activity on campus, and to begin to advocate and mount and organize (all of which was permitted) anything which they wished to advocate and mount and organize. If then the university had stepped in and said, but this is illegal action, then the students would have had a case. If it had been an illegal action that had occurred inadvertently, or an illegal action as defined by the state of Mississippi, or an illegal action which had the support or sympathy of wide sections of the community, why, then they would have had a good case. If it was an action that aroused the antagonism and repugnance of large sections of the community, they would admittedly have had a bad case. But instead of continuing the discussion, continuing it by undertaking the actions they felt necessary or desirable, they again occupied Sproul Hall, this time unsuccessfully and with little support.

Finally, there was the major occupation of Sproul Hall of December. The cause of this new action of disruption was the fact that charges were brought against four students. These students were to appear before the Faculty Committee on Student Conduct. Now I believed this action of the administration was both unwise and unjust. Unwise, obviously, as events showed. Unjust because I believed the pact of October 2, which I and a number of other faculty members had drafted and urged on the Chancellor and the President, was in effect wiping the slate clean of all the actions related to the surrounding of the police car. The question now was: What does one do about it? What after all is happening? One is to be brought up on charges before a faculty committee, of, one assumes, reasonable men to whom the facts will speak as they do to most reasonable men. I also know this is not a star chamber proceeding, because once earlier I had had an experience with such a hearing. The parties can be represented by lawyers. It was inconceivable to me that these four students could not have done an excellent job of demolishing the justice of the proceedings. They were not interested in demolishing the justice of the proceedings through arguments or hearings. Instead, they called upon Joan Baez to help them lead the students to the occupation of Sproul Hall again.

Thus I am unconvinced by the FSM argument that this was the only way to be heard--the students had made themselves heard before without these tactics; they could make themselves heard again. The night of October 4th and early morning of October 5th, you may know, a substantial body of professors met in Barrows Hall to ward off an impending crisis. I won't go into the details of this crisis, but in the course of that meeting we met with a lawyer who had been active as a student some years before in getting a certain rule modified. He was asked by the Dean of the Law School: "How did you manage to get through such changes without going in for sit-ins and the like?" It was a good question



then. It is still a good question.

A third development convinced me of the illegitimacy of these "last resort" tactics: the rapid shift in the movement from one representing all political groups to one representing the far left, and the revolutionary left, alone. Think of the power and force of a movement that included Young Democrats, Young Republicans, Conservatives! The resort to tactics of disruption made it impossible for those who opposed them on principled grounds to continue. The tactics then justified themselves. How can a leadership group composed in large part of revolutionary socialists make a good argument to public opinion, legislators, and the like? The only way is by tactics attuned to their small numbers--namely, the tactics of disruption. But then the conditions that would have made the tactics of reason possible were rejected by the FSM leaders themselves, by driving away the support they would have received from moderate and conservative elements in fighting for the restoration and expansion of political rights.

I am impressed too by the way in which the regular student organization was pushed aside. This too took the same position in favor of expanded rights of political activity that the moderate and right wing groups had. This too was a resource in the struggle. It was a resource the leaders of FSM did not wish to use. They were more enamored of their tactics than they were of the end--expanded rights to political activity on campus.

Finally, there was another ally that was not mobilized. Again and again in those early days, I was asked by students: where is the faculty? Many faculty members were concerned with the question. The faculty would have acted. The students disdained the hard work of discussing and arguing with the faculty. They presented it with faits accomplis that threatened the work of the university. Time is needed to organize the sentiment and actions of a thousand men. I have no doubt that if this sentiment and action would have been organized, the administration action would have changed.

Now we are told however that, after all, the faculty was mobilized, it did support the FSM position. Were not the FSM tactics the most efficient and expeditious way of organizing and mobilizing it? Could anything have worked better than confronting it with a strike of teaching assistants and the arrest of 800 students? How can one argue with success? And were not these tactics successful?

A university campus is the last place in the world I would think where one brings up the argument of success, or the crude argument that means have been justified by their effectiveness. Lenin too was successful and so was Stalin, and even Hitler, for a while, and this as you all know does not settle the argument.

The success of these methods is to my mind one of the most depressing things that has come out of the entire dispute. Any organized society is a very fragile thing. It is amazing that it works at all. But it works on the basis of the acceptance of rules and norms of behavior, which determine the kind of society it can be. Success in a way is an easy thing. Think how successful Oswald was. Think how easy it would be to kill most of the leaders of the world's states. Or to move to a smaller sphere, the leaders of the FSM are perfectly aware how easy it would be to disrupt the university. I need not add to the armory of disruption that has been discussed publicly and privately.

You all know that one proposal has been to sabotage the registration procedure for the Spring Semester.

And for what ends have we seen this childish and dangerous discussion of ways of messing up the registration procedure? For the ends of achieving free speech? I have not been convinced. For the end of the building of a movement and committing people to it by action? That, certainly. For the end of inducing in as great a number of people as possible the conviction that society and all its institutions, and in particular this university, are rotten? Certainly that. And if people are convinced that an institution is rotten then they become unrestrained in their actions, indifferent to the implications of what they do and even to the larger truth that a society is kept together by agreement on the rules and on the mechanisms by which it runs.

I have been told: perhaps these other means of changing the rules--working with the right and the center, with the student organization, with the faculty, developing support in the community and legislature, etc.--maybe all this would have worked, but look at how much time it would have taken. This again strikes me as a peculiar argument to raise on a university campus. The issue of time is critical in warfare, it is critical in political action. But a university one would think is the one place in the world in which you can take a good deal of time to settle matters. No one after all was up for hanging.

Let me now say something briefly about the relationship between this university and political action. The university does not exist to make students effective in political combat. If they learn something about it, well and good. Nor is its prime function, as so many of the student political groups and leaders seem to think, to offer them opportunities for the most effective conduct of their work. For many of them political activity has become full-time work, and their major emphasis is the recruitment of students to play a part in the community. The university, to my mind, should take the position that this purpose is relatively low in the order of priorities. It is obvious that the conduct of the classes comes before it. The conduct of research comes before it. The preservation of conditions that permit classes and research to continue comes before it. This order was reversed by the FSM. It took the position that let everything stop, but its position as to the proper role of political activities in the university must prevail.

The politicization of institutions that should not be political is to my mind a very dangerous thing--it is indeed, the mark of totalitarianism. A free society respects the rights of people to erect special institutions, religious, cultural, academic, or what one will. It respects the rights of those institutions to determine the conditions that are best suited for the realization of their aims. Neither the right of the university to determine its nature or to determine the conditions that foster it were respected by the FSM. It had decided what was important. And it had decided to impose its views as to what was important on the university, and accept no limit as to the means it would use to compel the university to accept its views. Such an approach to dispute can destroy a university. It has been used in one dispute. There is no indication in the philosophy of the FSM that it will not be used in a second. Will it be used to determine which faculty members shall be hired, and which shall be let go? Will it be used to determine what is taught in courses? Will it be used to realize the legitimate student interest in the academic conduct of the university. If it is, then the victory in this specific matter of political action on campus will mean very little. The university as we know it and as I think most of us would want it to be will then be gone.

MUNICIPAL COURT FOR THE BERKELEY-ALBANY JUDICIAL DISTRICT

COUNTY OF ALAMEDA STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

versus

MARIO SAVIO et al.

Defendant.

No. C-7468 through C-7547

BEFORE: HONORABLE RUPERT CRITTENDEN, JUDGE

A SUGGESTION FOR DISMISSAL

Submitted by: Certain Faculty Members of the University of California, Berkeley.

January, 1965

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ON STUDENT MILITANTS: Far from discouraging your students' social and public interests, I propose that you postively exploit them.

Here is an honorable source of college spirit; here is a worthy unifying and organizing principle for your whole campus life.

I say: thank God for the spectacle of students picketing--even when they are picketing me at Sacramento and I think they are wrong--for students protesting and freedom-riding, for students listening to society's dissidents, for students going out into the fields with our migratory workers, and marching off



to jail with our segregated Negroes.

At last we're getting somewhere. The colleges have become boot camps for citizenship--and citizen-leaders are marching out of them.

For a while, it will be hard on us as administrators. Some students are going to be wrong, and some people will want to deny them the right to make mistakes. Administrators will have to wade through the angry letters and colleges will lose some donations. We Governors will have to face indignant caravans and elected officials bent on dictating to state college faculties.

But let us stand up for our students and be proud of them.

If America is still on the way up, it will welcome this new, impatient, critical crop of young gadflies. It will be fearful only of the complacent and passive.

--From Governor Edmund G. Brown's Commencement  
Address at the University of Santa Clara, June 1961.

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California Penal Code Section 1385 authorizes the Court on its own motion, "and in furtherance of justice," to order an action dismissed.

The below-named faculty members of the University of California at Berkeley wish to suggest to the Court that an order of dismissal be entered in this cause pursuant to this Penal Code section. In our view justice would be furthered by such action. Involved in this case we believe are matters relating to the nature of a university, the character of academic freedom, and the relationship of these to civil rights and liberties. Because faculty members are an integral part of a university and devote their lives and professional endeavors to carrying on its work and furthering its purpose, some or all of these matters lie within their special knowledge and cognizance. We herewith submit to the Court for its consideration our analysis of these problems and our reflections upon their relation to the furtherance of justice in this case.

#### The Pattern of Events

On Thursday, 3 December 1964, mass arrests were made of the students who had occupied Sproul Hall on the preceding day and refused to leave. The action of the students who sat in has struck many as outrageous and unjustifiable; yet the Berkeley Division of the Academic Senate has refused to condemn the "lawlessness" of that action. The sit-in cannot be understood as an isolated and an independent event, but must be seen as a response to and culmination of an extraordinary series of events. At almost any point during the period between 14 September and 2 December the University Administration could, by acting with the judiciousness and understanding one expects of a university administration, have solved the problems about which both the students and a large number of faculty members were concerned. By reviving dormant regulations to revoke traditional privileges at a time of heightened political interest, by explaining such arbitrary restriction in ways both disingenuous and inconsistent, by making themselves unavailable for discussion with student leaders at moments when such discussion was crucially important, by seeking to discredit and minimize student dissatisfaction and failing to recognize that



the students sought no more than their rights as citizens, by punishing only a few arbitrarily chosen offenders where many were involved, by insisting on ill-timed, rigorous and vindictive disciplinary action, the Administration played a leading role in the creation of a situation in which the students felt that nothing short of dramatic direct action would gain them fair treatment.

The controversy began at the place where "off-campus" student political activities have been most conspicuous--the heavily traveled campus entrance at the corner of Bancroft and Telegraph Avenues. Here, on the sidewalk bordering the campus, a great variety of "off-campus" student groups concerned with political and social action have traditionally posted tables, speakers, and signs soliciting memberships, contributions, and participation.

On the assumption that the sidewalk was the property of the city of Berkeley, the groups have generally secured city permits for these activities. At the beginning of the fall semester administrative officers discovered that the portion of sidewalk used by student groups was actually University property and ordered the groups to discontinue their activities in this area. This order was apparently issued without conferences with student organizations affected by the new enforcement policy. Depriving the "off-campus" groups of their primary means of access to the student body, the order was made more unpalatable by the confused and conflicting reasons advanced to justify it. At one point administrative officers contended that they were concerned mainly about the obstruction of pedestrian traffic, at another that political activity on campus violated the state constitution; many students believed that the order resulted from outside protests against use of the area to recruit Scranton supporters during the Republican National Convention and to recruit pickets against alleged employment discrimination at a major metropolitan newspaper during September.

A broad alliance of "off-campus" groups, ranging from Young Republicans through civil-rights organizations to Young Socialists and groups even farther left, quickly formed in protest. This protest led to some modifications and clarifications, issued by Katherine Towle, Dean of Students, on September 21, in which an attempt was made to differentiate between distributions presenting points of view for or against propositions, candidates, and the like, and distributions urging specific action with regard to such matters. With apparent unanimity, the student organizations involved found the distinction neither constitutional nor practicable. On Wednesday, September 30, four card tables were set up immediately in front of Sather Gate by protesting student organizations--SNCC, SLATE, YSA, and CORE--which wished to test the regulations in question. Each table was operated by a number of students in succession. Between noon and 2:00 p.m. five students were "cited" for operating these tables without required activity permits and for unauthorized money raising. With what struck many as another example of administrative confusion and inconsistency, officials did not disturb the CORE table although open solicitation of funds occurred there also; it was later revealed that officials were under the impression that CORE had been granted an activity permit, though in fact under the regulations the administration was now enforcing the solicitation of funds was not permissible.

Sometime after 12:00 noon two Deans proceeded to Sather Gate and approached students manning or operating three of the tables. The Deans told each of the students that they were in violation of University regulations and instructed them to cease operations. The students, generally, responded that they understood that they were violating an interpretation of the regulations

but believed that their constitutional rights were being abridged by such interpretations and that they had a right to continue their activity. Most of the students so involved were instructed to report to the Associate Dean of Students by 3:00 that afternoon; additional students were cited at 2:10 p.m. Following the actions of the Deans at noon, hastily written petitions were circulated to students in the Sather Gate area. While differently worded, their general sense is incorporated in the one here quoted:

We the undersigned have jointly manned tables at Sather Gate-- realizing that we were in violation of University edicts to the contrary, and realize that we may be subject to expulsion.

Some four hundred students signed such petitions.

At 3:00 p.m., the students who had been cited, together with approximately three hundred other students (mainly, if not totally, the petition signers) appeared at Sproul Hall as a group. Dean Williams asked five of the cited students to come into his office. A student spokesman stated that the students would see the Dean only if he consented to proceed against all of the students who had admitted committing similar violations by signing the petitions. Dean Williams refused this condition (the Administration explained that it was punishing only observed offences, an explanation which under the circumstances struck the student community as disingenuous), and instead added three names to his list of five leaders. He then asked all eight to see him. The three hundred students again requested similar treatment and were rebuffed. The Dean then cancelled the meeting scheduled with the leaders of the groups. The students remained in Sproul Hall outside the Dean's office until early morning when Chancellor Strong announced that the eight students who had been cited had been suspended indefinitely.

For a number of reasons this announcement dismayed a large segment of the student community. For, as the Heyman Committee later found, the procedure by which the University acted to punish these wrongdoings is subject to serious criticism. The relevant factors are:

1. The vagueness of many of the relevant regulations;
2. The precipitate action taken in suspending the students sometime between dinner time and the issuance of the press release at 11:45 p.m.;
3. The disregard of the usual channel of hearings for student offenses-- notably hearings by the Faculty Committee on Student Conduct;
4. The deliberate singling out of these students (almost as hostages) for punishment despite evidence that in almost every case others were or could have been easily identified as performing similar acts; and
5. The choice of an extraordinary and novel penalty--"indefinite suspension"--which is nowhere made explicit in the regulations.

The next day, October 1, about ten tables were set up in front of the Administration Building and a rally was planned for noon. The "United Front," an organization representing a wide range of campus political groups, now demanded not only a change in the rules, but equal treatment for all students under the rules and, specifically, the lifting of the suspensions. At about 11:45 a.m., a Dean and a campus policeman approached one of the tables at which about a dozen persons were sitting. Jack Weinberg, a recent Cal graduate,

was placed under arrest when he refused to leave the table. Students spontaneously sat down around the police car which had arrived at the plaza and blocked the car from removing Mr. Weinberg. Mario Savio, head of Friends of SNCC, removed his shoes and began to address a crowd of over a thousand, from atop the police car. He discussed the position of the United Front and the injustice of the Administration's response to their free speech demands. Many others also made speeches. The protest was extended by sitting-in in Sproul Hall. Meanwhile, a group of faculty members tried to mediate during the afternoon and evening, but the Administration told them, and told the students as well, that the issues of the rules and the disciplinary measures were not negotiable. (Administrative officers consistently refused to discuss the issues in dispute as long as regulations were being violated, thereby abdicating their power to alleviate a situation of growing intensity.) On the afternoon of October 2 at least four hundred and fifty police officers were mobilized on the campus to disperse the demonstrators.

By early evening some six thousand demonstrators, sympathizers, and spectators were jammed into Sproul Hall Plaza, and individual faculty members were frantically trying to induce student leaders and administrative officials to agree to some settlement that would prevent violence and almost certain bloodshed. At the last minute an agreement providing a framework for negotiation through an Academic Senate committee on student conduct was reached, and the demonstrators dispersed. The agreement read as follows:

1. "The student demonstrators shall desist from all forms of their illegal protest against University regulations."
2. "A committee representing students (including leaders of the demonstration), faculty and administration will immediately be set up to conduct discussions and hearings into all aspects of political behavior on campus and its control, and to make recommendations to the administration."
3. "The arrested man will be booked, released on his own recognizance and the University will not press charges."
4. "The duration of the suspension of the suspended students will be submitted within one week to the Student Conduct Committee of the Academic Senate."
5. "Activity may be continued by student organizations in accordance with University regulations."
6. "The President of the University has declared his willingness to support deeding certain University property at the end of Telegraph Avenue to the City of Berkeley or to the A. S. U. C."

Several frustrating weeks of fruitless negotiation followed. Discussions got off to a bad start because many students were suspicious of a settlement which had been contracted under extreme pressure (President Kerr had told negotiating students that unless an agreement were reached by a certain time, the force of four hundred and fifty police assembled in Sproul Hall would be used to make mass arrests and to disperse the crowd). Further distrust was generated during the period following the agreement as the President repeatedly



asserted to off-campus audiences that no free speech issue was involved in the campus controversy, that the students were interested mainly in "anarchy" and "personal aggrandizement," and that about 40 percent of the student leaders were employing tactics derived from the practices of Mao Tse-Tung and Fidel Castro. Suspicion of the agreement was exacerbated when students and an embarrassed Administration discovered that there was no such Senate committee as that which President Kerr had designated in the agreement (item No. 4 above); and it grew still more intense when the Administration announced that the President must have been thinking of the Committee on Student Conduct, a committee appointed not by the Academic Senate but by the Chancellor, and that that administrative committee would hear the cases of the eight students. From the students' point of view, the Administration would constitute both prosecution and jury, and students found little evidence in administrative behavior of the preceding weeks to support assurances by officials of the Administration's good faith and good will. Eventually two committees were formed. A five-man faculty panel (the Heyman Committee) was appointed by the Berkeley Division of the Academic Senate to hear and make recommendations to the Chancellor on the cases of the eight suspended students. About the constitution of the second committee, the Campus Committee on Political Activity (CCPA), designated in the October 2 agreement, which was to explore the more general issues of campus political activity, there was additional altercation. The students involved in the political activities of the preceding weeks felt that they and their position were inadequately represented on the latter committee, a committee of which the four Administration members, the four faculty members, and two student members were appointed by the Administration, leaving only two places for representatives of the aggrieved students.

Despite concessions on the latter point, another impasse was reached when the Administration representatives on the CCPA declared themselves unalterably opposed to the students' position on political advocacy. The University demanded the right to discipline students and organizations advocating activities that "directly result" in "unlawful acts" off the campus. The students demanded that the definition of constitutionally protected speech and political activity be left solely to the courts, citing the stand of the American Civil Liberties Union and that of the American Association of University Professors: "In the area of first amendment rights and civil liberties, the University may impose no disciplinary action against members of the university community and organizations. In this area, members of the university community are subject only to the civil authorities." The students felt furthermore that the provision concerning advocacy was aimed at student organizations that participated in off-campus civil rights demonstrations. Student groups resumed the manning of tables on campus, and the Administration dissolved the committee.

In the weeks that ensued, the faculty, through its Academic Senate, steadily called for what it believed right: liberalized regulations on the one hand and a return to peace and order on the other. At this point, all parties looked to the Regents to furnish a satisfactory basis of settlement at their meeting in Berkeley on November 20. Their most significant action was to authorize the advocacy and organizing of off-campus action in certain carefully regulated areas on the campus. The Regents still insisted on the Administration's reservation that only lawful activities could be advocated in such areas. It should be noted that at its meeting of December 8 the Berkeley Division of the Academic Senate declared itself opposed to any restrictions whatever on the content of speech on campus. In so declaring, the Division

supported the position that the students had been advocating for some time; this declaration was in some sense the direct culmination of a number of weeks of student agitation and would certainly not have been made had the students not dramatically called the University regulations in question. Student dissatisfaction with the Regents' reservation on the question of advocacy was considerably allayed when Chancellor Strong issued a detailed policy statement indicating that advocacy would not be disciplined unless and until it led to judicially found violations of the law.

Though the Regents' policy as elaborated by Chancellor Strong did not go the full constitutional distance this time, still it might have eventually proved acceptable to a great majority of the University community had the Administration not suddenly--and to the surprise of all--initiated disciplinary measures against four student leaders for acts that had occurred nearly two months earlier. To many students (and faculty members) this action seemed unwisely provocative as well as contrary to the spirit of the agreement on October 2.

Thus, by December 2, after two months of intense concern and tireless effort, the students' sense of achievement and their hope for increasing recognition of their rights had suddenly been totally destroyed. Until the Chancellor's unexpected action, the students had watched a reluctant Administration yield point by point in direct response to their protests and had become aware of the extent to which they had widened campus political freedom; but the Chancellor's action, revealing as it did, a spirit of vindictiveness at a time when the entire campus community expected a general amnesty, made these gains of the past seem illusory and further liberalization impossible.

In these circumstances it seemed to them that only dramatic direct action could set in motion a process that might ultimately lead to a just settlement. On the afternoon of December 2 the students occupied Sproul Hall.

#### Academic Freedom and Student Political Activity

What distinguishes man from the other species is that in addition to wishing to live, he wishes to live well. Living well, the search for the good life, means living not only in the here and now but in the past, not only in the past, but for the future. From this perspective, the function of a university is to contribute to the possibility, for all men, of living well. This contribution has seemed most obvious in the realm of science and technology where the goods involved appear most tangible and beyond dispute. But even here it will be seen that rarely is the entire society immediately grateful for the discovery of a new process or the development of a new instrument. Fear of the unknown and distrust of the unfamiliar are a powerful motive against novelty. It is no wonder then that ideas, and especially ideas about politics and society, should also engender fear and distrust. The part of us that wishes simply to live as distinguished from the part that wishes to live well is marvelously conservative. Living within a familiar and comfortable reality is not only more pleasant, it serves as a salutary check upon constant experimentation likely to end in chaos. Form is a good not to be despised. But after all, the responsibility for the defense of the familiar is so generously diffused throughout society, and manifest in such a preponderance of our institutions and practices, that there exists a danger of atrophy through thoughtlessness. The University, alone among all our



institutions, has traditionally upheld the responsibility for maintaining intact a necessary dedication to the creation and testing of new ideas.

So far so good, sound doctrine bearing the seal of ancient theory and practice. Yet in a strange reversal of customary roles, it is not the society against which the academician now seeks protection for his ideas and experiments. He finds himself in the anomalous position of having to defend them against his erstwhile protectors, those charged with the authority to administer the academy itself.

The finest passions of our people are presently enlisted in the cause of redressing profound political and social injustice. From the highest courts of the land, from the Congress and the State legislatures, from the words and deeds of Presidents, as well as from the exhortations of great men in and out of the universities, young people are instructed in the part they may play in the quest for justice. No wonder that our students feel bewildered when their own university impedes realization of the teaching of the times. No wonder they feel betrayed in their search for justice when those who run the University, and who of all people might be expected to sympathize with the nobility of their passion, have worked instead to hinder them. Where once the members of the academy had been forced to fall back upon privilege to carry out their necessary tasks, they now find themselves seeking to defend their rights as citizens against those within the University who would deprive them of these rights.

Academic freedom has traditionally centered around three types of activities: inquiries aimed at extending the boundaries of knowledge and testing new ideas and theories; the critical re-examination of accepted ideas, theories, and beliefs; and the communication, sharing, and refinement of ideas, knowledge, and theories with other interested members of the academic community and with the community at large. Both principle and experience testify that these activities are best performed if a university is able to sustain an environment which encourages these activities to the fullest and protects them from invasion from without as well as erosion from within.

As a result of its efforts to protect freedom of inquiry, criticism, and teaching, the university has acquired a special character. It has, for example, separated itself from the larger society in many ways: by physical location, by developing a distinctive way of life, by attempting to supply its own form of governance, and by providing a place where ideas and theories, known to be repugnant or strange to the rest of society, could be critically examined. Although there have been periods in which society or its authorities have challenged the immunities of the university and have inflicted severe penalties on its members, the distinctive nature of the university, as well as the special conditions of life which it requires, have come to be accepted in most parts of this nation. Today it is not difficult to persuade informed citizens that academic freedom is a vital necessity if there is to be scientific advance, technological innovation, and greater knowledge about man and society. What is not so readily understood is the relationship between freedom of inquiry and the activity of teaching, as well as the bearing of this relationship upon the political or social beliefs and actions of members of the academic community. No one doubts that university scientists ought to be free to test, to experiment, and to impart knowledge to their students. But there are many who might grow uneasy if this conception of academic freedom were applied to more controversial areas, such as political rights and social equality. So the Board of Regents



and the University Administration appear to have believed. The threat to academic freedom posed by their attitudes to student advocacy was immediate and substantial.

Certainly, academic freedom is peculiarly attached to the idea of a university and the aims of a university education. But it is not the only freedom possessed by the citizen to speak, to write, and to discuss. True, academic freedom has its own distinctive and honorable tradition, at least as old and perhaps older than that which governs the general freedom of speech. But the importance of speech and discussion to the university is first and foremost instrumental: it is indispensable to learning and indispensable to teaching. The very activity of education, for student and teacher alike, is the free exercise of open minds. Whenever in the pursuit of knowledge speech is guarded and minds are sealed, the educational dialogue deteriorates into monologue, arguable hypotheses harden into dogma, and the will to stimulate active inquiry yields to the demand for passive acceptance.

What transpires in such an atmosphere does not deserve the name of learning, but of conditioning. Closed minds, on the part of students, can doubtless be indoctrinated; they may even be trained; but they cannot be taught. Closed minds, on the part of professors, can issue directives; they may even give lectures; but they cannot teach. And closed circuits of communication between students and teachers can never conduct the intellectual spark by which the minds of students and teachers alike are ignited.

Academic freedom then is not an end in itself. It is an indispensable means to the unique objective of the university: that of the cultivation of minds and the provocation of thought. "Academic freedom and tenure," as Alan Barth has written in The Loyalty of Free Men, "are not privileges extended to the teaching profession, but a form of insurance to society that the teaching profession will be able to discharge its function conscientiously." To this it may be added that freedom of speech and advocacy are not privileges extended to students, but equally a form of insurance to society that the next generation of citizens will be able to discharge their functions and conduct their affairs conscientiously, reasonably and responsibly.

It was this general conception of the purpose and spirit of academic freedom which Justice Frankfurter had in mind when he reminded us (*Wieman v. Updegraff*, 344 U. S. 183 (1952), at 195-197) that "public opinion is the ultimate reliance of our society only if it be disciplined and responsible. It can be disciplined and responsible only if habits of open-mindedness and of critical inquiry are acquired in the formative years of our citizens,... It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who, in turn, make possible an enlightened and effective public opinion." And he warned that "unwarranted inhibition upon the free spirit of teachers...has an unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice; it makes for caution and timidity in their associations by potential teachers."

Justice Frankfurter's reference to "potential teachers" points to a further aspect of academic freedom as it bears upon students. College students are not only citizens-in-training; they are also scholars-in-training. They are apprentice or junior members of the scholarly community, whose interest in open inquiry, speech and discussion is identical with that of their seniors. Of

course not all will become teachers; but some of them will and any of them might. If they have learned their trade in a restrictive or fearful environment, they cannot be expected to practice it fearlessly and wisely when their turn comes to teach.

In the community of scholars which embraces teachers and students alike, the paramount need is to create and preserve a climate conducive to the growth of critical inquiry and independent thought. On its negative side, that need requires the exclusion of all irrelevant pressures and restraints which would interrupt the dialogue or qualify its practice. Affirmatively, it demands the provision of opportunities and incentives for the members of the community to enrich and enliven that joint activity. Such opportunities are not limited to the classroom, with its somewhat formal procedures and methods of instruction. The entire campus is but an extended classroom, replete at every turn with provocations to thought and prods to conversation. Anyone who has been a student knows the corollary and complementary values to formal education of such occasions as speeches, debates, group discussions, even coffee klatches and bull-sessions. It follows that these occasions and opportunities should be not merely tolerated but assiduously cultivated.

There is growing recognition today that students can no longer be treated as mere transients who "receive" an education from their teachers, but they must be accepted as a constituent part of the academic community. The rights and privileges of membership include not only the freedom to learn, to inquire, and to discuss, but the right to be treated with dignity and to be allowed to take a responsible part in the affairs of the community. The harassment, petty vindictiveness, and arbitrariness suffered by the students throughout the Fall semester of 1964 indicate the utter failure of the University Administration to understand how members of an ancient and proud community ought to treat one another.

A university is no longer an isolated enclave in which the members are content to exchange ideas among themselves and to train their successors. In every field of endeavor from science to social work, from literature to civil rights, there are representatives from the university in close contact with the outside world: as consultants, as decision-makers, as training-advisers, and as participants. The insularity of the university is rapidly falling before a growing belief that what is learned on the campus is not remote from life, but must be made central to life, and that this includes not only scientific knowledge, but the humane values which have been nourished in a climate of academic freedom and which call for translation into the relationships among men in the larger society.

If, in the present age, the boundaries of a campus symbolize a free community pledged to rational inquiry and not a closed community separated from the public world, there is pressing need to reaffirm the political rights, as well as the academic freedom of the members of the university. What is often denied them, not only outside the campus boundaries, but more recently inside, is the right to take their ideas seriously. Freedom to discuss and to inquire has been granted members of the academic community presumably in order to allow them to reflect, among other things, upon questions of human conduct, the dignity of the person, and the values of liberty, equality, and voluntary consent. But when students have sought to translate these ideas into campus practices and social realities, they have been hampered and discouraged by university restrictions severely infringing their rights as participating



members of an academic community and as citizens of American society. Idle thought and idle talk make idle citizens.

It is no less true of freedom in the academy than of freedom in society that it requires regular and vigorous exercise if it is to survive and serve its ends. That exercise is found in continuous contest and criticism, the free competition of the academic marketplace. Students and faculty members who seek personal safety in the avoidance of all uncertain commitments and outrageous hypotheses do no service to the cause of higher education. In this connection, not the least of the constructive consequences which have followed upon the past semester of student activity at Berkeley has been the shock of recognition it has produced in the ranks of the faculty--the recognition, at last or once again, of the necessity to take their vocation seriously: to practice in the concrete what they have always preached in the abstract.

Recognition, not discovery, is the proper word, for there is nothing novel or uniquely modern about it. Wise men in other ages, concerned for the future of human liberty, have emphasized that rights and freedoms may be lost as readily by default as by defeat. In his majestic defense of freedom of thought and expression, Areopagitica, John Milton wrote: "Well knows he who uses to consider, that our faith and knowledge thrive by exercise, as well as our limbs and complexion. Truth is compared in Scripture to a streaming fountain; if her waters flow not in a perpetual progression, they sicken into a muddy pool of conformity and tradition." Two centuries later, John Stuart Mill returned to that theme in his essay On Liberty "There have been, and may again be, great individual thinkers in a general atmosphere of mental slavery. But there never has been, nor ever will be, in that atmosphere an intellectually active people. . . . However unwillingly a person who has a strong opinion may admit the possibility that his opinion may be false, he ought to be moved by the consideration that, however true it may be, if it is not fully, frequently, and fearlessly discussed, it will be held as a dead dogma, not a living truth."

The recent events on the Berkeley campus were an expression of the deep concern of students for their rights of membership both in the university community and in the larger political society. It is a concern intimately connected with academic freedom, for it asks those who teach and those who administer whether the values encouraged by a free academic atmosphere could be taken seriously. Contrary to widespread impression, the students never contended that academic freedom constituted a license for breaking the law. What they have denied is that the perpetuation of the functions of a university requires that the political rights of students be inferior to those of citizens, and that political and social values must be taken so seriously that members of the academic community would attempt to advocate or promote those values by political means.

#### The First Amendment and student political activity on campus.

When the Academic Freedom Committee of the Academic Senate was preparing the proposals which were adopted by the Academic Senate on December 8, 1964, designed to encourage the widest possible latitude of student political activity on campus consistent with the proper functioning of the institution, to forbid any University restrictions on the content of such political expression, and to permit only reasonable and minimal regulation of time, place, and manner, of



conducting political expression on campus, it established, with the cooperation of Dean Frank Newman of the Law School, a law school committee of consultants on the constitutional issues involved. In the course of discharging its consultative duties, that committee prepared a report which the Academic Freedom Committee then submitted to the Academic Senate at the meeting held January 12, 1965. We herewith submit and incorporate that work of three of our colleagues in Appendix B of this paper as containing an authoritative analysis of the extent to which the First Amendment limits the authority of the University to regulate student political activity on campus.

The authors of the report are Professors O'Neil, Linde, and Cole. They hold degrees from Harvard, California, and Harvard, respectively. All three teach constitutional law. Professor O'Neil has served for one year as law clerk for Mr. Justice William J. Brennan. Professor Linde for one year as law clerk for Mr. Justice William Douglas, and Professor Cole for one year as law clerk to Mr. Justice Sherman Minton.

For convenience, the conclusions of Professors O'Neil, Linde, and Cole may be briefly summarized at this point. Essentially, they are three:

1. The University of California is subject to the limitations of state and federal constitutions, safeguarding individual liberties, including those safeguarding freedom of expression; and admission to the University may not be conditioned upon the student's surrendering these constitutional rights.

2. The University may regulate the time, place, and manner of student speaking on campus if the regulations are "narrowly drafted to serve interests of the University that may be either of general applicability to governmental institutions or peculiar to the academic community." Such regulations may "not discriminate against a particular class of expression."

3. "The courts have made it increasingly clear in recent years that any regulations based upon content or substance of expression are very vulnerable to constitutional challenge." Accordingly, the University should not adopt any such regulations. In any event, they are not necessary, if applied to extra-curricular speech by students, to protect any legitimate interest of the University.

Since the authors of the report were directing their analysis to the propriety of proposed future University regulations, they did not particularly apply their analysis to the pre-existing University regulations against which the students have been struggling. When this is done, however, the conclusion cannot be escaped that those regulations, selectively directed against political activity aimed at political and social action, were constitutionally invalid as forbidden restrictions upon content, as discriminating against particular forms of expression, and as not serving any protectable interests of the University.

#### Other Constitutional Issues

Constitutional issues arise in profusion in addition to those already mentioned in connection with the First and Fourteenth Amendment. Many of these are presented in connection with the trial itself. They relate to such

matters as: whether on its face Penal Code section 1098 is not unconstitutional in the light of the unlimited discretion there granted; whether standards of due procedure, fair trial, and the equal protection of the laws are met when the defendants are divided into groups of ten for trial and when one considers methods by which the division is accomplished; whether in these circumstances the defendants can secure a speedy trial, an effective right to counsel, and a constitutionally composed jury. These problems, however, lie outside the range of our immediate concern. They undoubtedly will be fully explored in due course by the defendants and their attorneys.

One further constitutional question, however, has a special bearing upon our request for action under Penal Code section 1385 for dismissal of the prosecutions "in furtherance of justice." That question arises out of the circumstances of the arrests in Sproul Hall and in the busses afterwards. These circumstances have been described in detail by an eye witness, Joel L. Pimsleur, an associate editor of the San Francisco Chronicle. Mr. Pimsleur's account is published in the Columbia (University) Daily Spectator; and is contained herein as Appendix F. The police brutality and indignity there described not only give rise to constitutional questions, but, in the circumstances, would require that the actions against these students be dismissed. Even assuming their guilt arguendo, justice can only be served by dismissal, the punishment already meted out having exceeded that which would be proper for the alleged offence.

#### Student Political Activities and the Civil Rights Revolution

From its inception, the student movement for free speech has been inseparably bound up with a broader phenomenon in American society--the movement for civil rights. There can be no adequate understanding or appraisal of the recent student activity at Berkeley--in terms of its origins and context, its fundamental aims and purposes, or its methods of operation--without an understanding of this nationwide struggle for equality.

The civil rights movement represents nothing less than a revolution in the fabric of American society, affecting virtually every institution and every citizen. It goes on in the legislatures and law courts, in the schools and residential neighborhoods, in the labor unions and industrial concerns, in the public parks and swimming pools of the land. It is a movement as young as the present generation and as old as the American experience. The struggle now being waged for the rights of the Negro minority is the contemporary expression of the nation's historic commitment to equality--first enunciated in the Declaration of Independence and then activated by the abolitionist movement in the generation preceding the Civil War. [For striking parallels between the activities and resistance to the students of today, see Appendix E dealing with the Lane Seminary episode of the early 1830's.] Indeed, the current struggle is a renewal and continuation of that nineteenth-century crusade which won its major victory with the abolition of Negro slavery and the enactment of the three great Civil War Amendments to the Constitution: the Thirteenth, Fourteenth and Fifteenth. Those amendments embraced the comprehensive goals of the anti-slavery movement. They nationalized the right of freedom and utilized the doctrines of equality and the protection of the laws to safeguard what were then seen as the natural or civil rights of all men, bond and free, black and white.

Although those Amendments represented great victories of principle, there



was still a world to win. What the basic law of the land gave with one hand, it soon took away with the other. For if Negroes were no longer slaves, in the wake of Plessy v. Ferguson (163 U. S. 537) they were explicitly relegated to a "separate but equal" existence. The great purposes of the Civil War Amendments were not effectively restored until 1954, when the Supreme Court in Brown v. Board of Education (347 U. S. 483) unanimously held that the Fourteenth Amendment commands equality and that in racial matters "separate is unequal." The Brown case breathed new life into the struggle for equality and unleashed the militant energies of the long-suppressed Negro minority. It also gave rise to a renewed commitment to equality for all Americans, sanctioned by the highest court in the land.

One year after the school desegregation decision, the new civil rights movement began in earnest with the spontaneous and successful bus boycott by the Negro citizens of Montgomery, Alabama. That unprecedented mass protest remains significant for several reasons: it introduced the principle of nonviolent action to secure civil rights; it marked the emergence of the Reverend Martin Luther King as a leader of the movement; it struck at segregation beyond the schoolroom, and it succeeded in achieving its immediate purpose, integration of the city buses. For all those reasons, the Montgomery boycott reinforced the spirit of equality which the Supreme Court had proclaimed anew, and inspired the long succession of forceful but nonviolent actions--the famous "sit-ins," "freedom rides," and demonstrations--which have since characterized the civil rights movement.

From the beginning the relationship of student political expression and civil rights activities has been one of close and reciprocal influence. Not only have events on the civil rights front stimulated students on the campuses to parallel action in other fields, but the civil rights campaign itself has been predominantly a youth movement staffed, supported and largely led by students. This relationship was emphasized by James Farmer, national director of the Congress of Racial Equality (CORE), in an FSM rally on December 15, 1964, at Bancroft and Telegraph:

Had it not been for the right of students on our college campuses to advocate involvement in civil rights and other social struggles, the civil rights revolution would never have and could never have gotten off the ground. Had there been on the Negro college campuses in the South in the spring of 1960 regulations barring the advocacy of actions which might become illegal, there would not have been the student sit-ins in the year 1960, and had there been no student sit-ins then there would have been no freedom rides in 1961. There would not have been the student movement in Mississippi this summer; there would not have been the agitation on campus after campus that we have seen.

The lunchroom sit-ins which swept the South during 1960 and 1961 were conducted almost entirely by students from the Negro colleges. One such student, James Meredith, was the center of national attention in 1962 as the United States Government placed its federal marshalls and troops behind his effort to matriculate at the University of Mississippi. Moreover, one of the most effective civil rights groups active in the South, since 1962, has been the Student Non-Violent Coordinating Committee (SNCC), organized by students independently of existing older organizations. The participation of large numbers of students from the North as well as the South, both white and Negro,



has undoubtedly given the major impetus and fundamental character to the civil rights movement as we know it today.

That movement, as Professor Henry Nash Smith has said, "expresses the moral idealism of a whole generation of young Americans." Their moral idealism also found expression in the Peace Corps, created by executive order of President Kennedy on March 1, 1961--a challenge to which young Americans, preponderantly college students, have responded by the thousands in order to serve in African tribal communities, South American slums and Asian villages. (It is instructive to contrast this "new generation of doers," as one writer has called it--"of impassioned young men and women who want desperately to make a difference"--with the description once submitted by the Gallup Poll of the typical young American in the decade of the 50's: "He wants very little because he has so much, and is unwilling to risk what he has. He is old before his time; almost middle-aged in his teens." Quoted in G. K. Hodenfield, "Generation of Doers," Associated Press dispatch, San Francisco Chronicle, This World Section, January 10, 1965, pages 10-11.)

One of the leaders of the Berkeley students' Free Speech Movement, Michael Rossman, has contributed this analysis of the origins of student involvement and concern.

Strong and complicated forces built the potential for the sudden emergence of the [student movement] in the North . . . . Their appearance was triggered by a new kind of silence in the South, the silence of young people in buses and at lunch counters. It was a waiting silence, not a fearful silence, and it said, "Now it is time." The Montgomery bus boycotts, the later sit-ins at lunch counters across the South, and the students waiting quietly at classroom doors, surrounded by jeering crowds, were spread on the television screens and newspapers of the whole country. They carried a special message for the new students: the message that action was possible.

....Suddenly, in the South, people were taking action: silent action, directed toward specific goals, and embodying a moral protest. In particular, it was a new kind of action. Morally unquestionable, it was often illegal. Its tactics were dramatic and unprecedented. Its goals were limited and clear....

The present distinguishing features of new radical activity in the North all follow the Southern pattern. It is issue-oriented, it depends heavily upon the drama of its protests, and its voice throughout is one of moral outrage.

A former president of Sarah Lawrence College, Dr. Harold Taylor, has defined one source of the idealism and activism of today's student generation in terms of the peculiar circumstances of their coming of age. This generation, he observes, "missed the great depression, The Nazi-Facist movement, the second World War, McCarthyism and the Eisenhower era. They sprang directly, uninhibited by history, into a time when the moral issue of freedom for the colored races, in America and in the world, and the moral issue of peace against war, life against death, gave them clear alternatives for taking sides." (Saturday Review, as quoted in G. K. Hodenfield, supra.)

A representative product of this practical idealism is the Northern Student

Movement (NSM), which was founded at Yale University in June, 1962. Closely allied with the civil rights activities of the Student Non-Violent Coordinating Committee, the NSM has gone on to initiate active programs of aid to slum children and adults in cities across the country. The movement now has more than seventy affiliated branches on Northern college campuses, with an estimated active participation of three thousand to four thousand students. Somewhat resembling a domestic Peace Corps, the NSM seeks to inform and assist slum dwellers through such means as community centers operated by and for the residents (following the pattern of centers already established in Southern Negro communities). The NSM's projected activities include school boycotts and rent strikes by slum dwellers as means of exerting pressure for community reforms. The movement is clearly one of practical service and direct action, aimed at giving a voice to dormant groups of the underprivileged.

It remains true that, in the words of the Collegiate Press Service (an agency of the United States Student Press Association), the principal inspiration for the widespread occurrence of student protests and demonstrations "probably is the civil rights movement. This movement, which involves large numbers of politically active students, convinced many of them that non-violent demonstrations could be an effective device on the campus. It also served to make them more sensitive to their own civil rights." (Hodenfield, op. cit.)

At Berkeley the relationship between the student Free Speech Movement and civil rights activity has been especially intimate. The local movement was a direct outgrowth of the negative response of the University Administration to civil rights demonstrations and other actions on campus. The restrictions imposed upon political activity fell with particular severity upon the fund-raising and recruiting efforts of civil rights groups. Leaders of campus civil rights groups thereupon became leaders in the Free Speech Movement; the goals of the civil rights struggles became the goals of the Free Speech Movement--and the non-violent methods of the former became the non-violent methods of the latter. The coalescence of the two movements in the minds of many students is suggested by this statement of an FSM leader, Mario Savio, during the Sproul Hall demonstration:

Last summer I went to Mississippi to join the struggle there for civil rights. This fall I am engaged in another phase of the same struggle, this time in Berkeley. The two battlefields may seem quite different to some observers, but this is not the case. The same rights are at stake in both places--the right to participate as citizens in a democratic society and the right to due process of law. . . . The things we are asking for in our civil rights protests have a deceptively quaint ring. We are asking for due process of law. We are asking that our actions be judged by committees of our peers. We are asking that regulations ought to be considered as arrived at legitimately only from a consensus of the governed.

Prior to the imposing of University prohibitions upon student political activities, campus civil rights groups--of whom there were a great many after 1956--had made common use of the entrance property at Bancroft Way and Telegraph Avenue. In particular, funds were raised for civil rights work in the South and students were recruited for membership in SNCC, CORE, and other civil rights organizations. Additionally, large numbers of students were recruited there to take part in local shop-ins, sit-ins, and other forms of non-violent protest against discriminatory hiring policies.



The abrupt prohibition of student activities in the area of the campus entrance, whatever its intentions, struck with critical force at the efforts of the civil rights groups. It is not surprising to find that these groups (notably the student chapter of CORE and the University Friends of SNCC) were among the nineteen organizations which immediately joined together to protest the negative ruling. Out of this protest grew the Free Speech Movement. It was the president of the University Friends of SNCC, Mario Savio, who became the principal spokesman for the FSM. Representatives of civil rights groups also assumed other positions on the FSM steering committee. Moreover, the membership of campus civil rights organizations represents a significant percentage of the FSM's active membership. (A study of 598 of the students arrested for the December 2-3 sit-in demonstration has been made by a committee of graduate political science students. Of that number, 25.6 percent were found to be members of "civil rights organizations like NAACP and CORE," and 22 percent had participated in ... one previous demonstration." The Berkeley Free Speech Controversy, a Preliminary Report prepared by: A Fact-Finding Committee of Graduate Political Scientists, page 23.)

Campus CORE and SNCC were among the four groups which violated the September ruling by erecting card tables on the restricted property strip and engaging in prohibited activity. Hundreds of students took turns in manning the tables in violation of the rules, but disciplinary action was taken against only eight students, four of whom were members of SNCC. The campus SNCC leader, Mr. Savio, was one of two students charged in disciplinary action with organizing and leading the sit-in demonstration of four hundred students which occurred on September 30.

The specific goals of the student Free Speech Movement may be summarized as the demand for an effective and meaningful opportunity to exercise fundamental constitutional guarantees of free speech and free political action. The achievement of these goals required that the students also gain a role in the concrete decisions affecting their rights, as well as an effective set of procedural guarantees. The goals of the students were in themselves goals sought by the civil rights movement and aids to participation in the civil rights movement.

The civil rights movement has learned, painfully, that the civil rights guarantee of equality cannot be secured with the civil liberties guarantees of the Bill of Rights--including the guarantee of freedom of speech. The civil rights movement in recent years has been harassed by subversive activities investigating committees (Gibson v. Florida Legislative Investigation Committee, 372 U. S. 539); has been denied organizational rights in Alabama (NAACP v. Alabama, 357 U. S. 449); has been denied effective access to the courts in Virginia (NAACP v. Button, 371 U. S. 415), and has been denied the right to protest effectively in South Carolina (Edwards v. South Carolina, 372 U. S. 229)--to name but a few of the hundreds of cases in which the civil liberties of the civil rights movement has been essential to the securing of civil rights. The point has been summarized by the Reverend Wyatt Tee Walker, Executive Assistant to Dr. Martin Luther King: "It can be categorically said that without civil liberties, there can be no civil rights. The history of our American democracy reveals clearly that civil liberties are the necessary tools by which one secures his civil rights." (Quoted in The Southern Patriot, March, 1964).

From the outset of the Berkeley controversy, The Free Speech Movement made frequent use of the controlled, non-violent techniques of the civil rights movement. The significance of these techniques and the nature of their highly



controlled use have been described in the letter written by Dr. Martin Luther King from a jail cell in Birmingham, Alabama.

You may well ask, "Why direct action? Why sit-ins, marches, etc.? Isn't negotiation a better path?" You are exactly right in your call for negotiation. Indeed, this is the purpose of direct action. Non-violent direct action seeks to create such a crisis and establish such creative tension that a community that has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored. We must see the need of having non-violent gadflies to create the kind of tension in society that will. . . help men to rise from the dark . . . depths of prejudice and racism to the majestic heights of understanding and brotherhood. So the purpose of the direct action is to create a situation . . . so crisis-packed that it will inevitably open the door to negotiation. We, therefore, concur with you in your call for negotiation." (The Progressive, July 1963 [emphasis added].)

According to Dr. King, the very purpose of non-violent techniques of direct action is to create the conditions under which negotiation becomes possible. The use of non-violence proceeds from the premise that negotiation is impossible where one side to a controversy has a monopoly of power and refuses to negotiate. The application of the non-violent techniques by the Free Speech Movement to achieve a condition of negotiation may be illustrated by reference to the events related in the Heyman Committee Report and the Graduate Students Study.

1. The original edict shutting off political activity at the Bancroft-Telegraph entrance to the University "was issued unilaterally in the sense that no conferences with student organizations affected by the new enforcement policy were held, nor were any student organizations consulted." (Heyman Committee Report.)
2. The affected organizations "sought and secured conferences with Dean Towle and other Administration representatives. . . . The protests led to some modifications and clarifications issued by Dean Towle on September 21." But no fundamental concessions were made with respect to political activity of the kind sought by the organizations. (The Heyman Committee Report.)
3. "The students refuse to accept these pronouncements. . . . They request a change in the rules. Dean Towle says she cannot change the rules. The students, with permits from the University, set up tables; however, traditional practices--including fund-raising, membership recruitment, and advocacy, mostly related to the upcoming elections--continue during this first week of school." (Graduate Students Study, page 3.)
4. On September 28, Chancellor Strong calls a University meeting and discloses a "change in the rules. Henceforth, advocating a position for or against a candidate or a ballot proposition will be allowed, but no further changes are envisaged. The matter is closed." (Graduate Students Study, page 3.)
5. On the same day the student organizations hold a rally in violation of the rule requiring 24 hours' advance notification, and then adjourn to picket the University meeting. (Heyman Committee Report.)

6. On September 30, the Administration cites students "for operating... tables without required activity permits and for unauthorized money raising. . . . Deans Murphy and Van Houten told each of the students that they were in violation of University regulations and instructed them to cease operations. The students generally responded that they understood that they were violating an interpretation of the regulations but believed that their constitutional rights were being abridged by such interpretations and that they had a right to continue their activity." (Heyman Committee Report.)
7. On the evening of September 30, eight students cited for violation of the rules by manning tables in the restricted area are given an indefinite suspension from the University by Chancellor Strong. With respect to the suspension, the Heyman Committee Report states: "The procedures followed were unusual. Normally, penalties of any consequence are imposed only after hearings before the Faculty Student Conduct Committee. Such procedure was not followed here with the result that the students were suspended without a hearing." [Emphasis added.]
8. On the same day (September 30), "in Sproul Hall a sit-in occurred which lasted until approximately 2:00 a.m. on October 1. The sit-in was orderly in the sense that aisles were cleared, doorways were not blocked and there was not an excessive amount of noise for 300 students grouped at such close quarters." (Heyman Committee Report.)
9. "Clergymen and student religious leaders who support the goals of the protestors try to mediate behind the scenes. Meetings with deans are fruitless. Meanwhile, a similar group of faculty members works out a compromise and, together with some legislators, convinces President Kerr to meet with the students during the late afternoon. President Kerr summons five hundred policemen to disperse the crowd of over one thousand if an agreement is not signed. A long, tense meeting results in a six-point agreement." (Graduate Students Study, page 4.)

The events cited here, which are repeated in a more complicated fashion in the events leading up to the sit-in demonstration for which the arrests occurred, demonstrate that direct and meaningful negotiation with the involved students and student organizations occurred only after a crisis was precipitated by use of non-violent techniques. The techniques in large measure accomplished the ends sought, so that the conditions for meaningful negotiation on the campus have now been largely achieved.

The American commitment to increasing equality has been paralleled by growing acceptance of the civil rights techniques of non-violence. Indeed, there has been created a new politics--a politics of non-violence. In Detroit a quarter of a million people marched down the streets demanding immediate steps toward racial equality, blocking the city streets and tying up traffic--without interruption. In the nation's capital, the Great March on Washington for Jobs and Freedom disrupted traffic and governmental work but was hailed by government leaders. Other forms of protest have been similarly accepted.

Deliberately refusing to go to school is truancy, and urging children to stay out of school is illegal. But no one punished 9,000 Boston students last June [1963] when they invented the one-day school boycott and the substitute one-day "Freedom School"; nor did anyone punish either the 250,000



Chicago and 360,000 New York students who later adopted the boycott methods, or their parents and civil-rights leaders who suggested and led it. ("Creative Disorder in the Racial Struggle," The Correspondent, Autumn, 1964, page 67.)

The justice of the new forms of non-violent resistance to racial and political inequity is closely linked to the justice of the goals to which the techniques are directed.

It is the people who are "outside" a particular system of political order who have to invent new techniques that look disorderly to people inside the system. In the same way, back in the seventeenth and eighteenth centuries, urban lawyers and merchants who could not get the old crowd of politicians to pay attention to their grievances (and who were scarcely represented in parliament), used the illegal and disorderly device of political pamphleteering against the established order. In the same way, nineteenth-century workers who could not get their employers or the elected legislators to pay attention used unionization and the strike--which at first was illegal--to call attention to their grievances. In both these cases, using the politics of disorder not only got the immediate grievances looked after but also got the new techniques accepted into the array of authorized and approved political methods. Thus the "criminal libel" of political pamphleteering is now enshrined as freedom of the press, and the "criminal conspiracy" of striking is now enshrined in our system of free labor unions. One century's disorder became the next century's liberty under ordered law. (Id. at 63.)

The sit-in demonstration has achieved a measure of support even by the state legislature of California. A round-the-clock sit-in demonstration in the State Capitol building was permitted for over two weeks at the end of the 1963 regular session of the legislature during the lengthy battle over the passage of the Rumford fair housing bill. (See, for example, The Sacramento Bee, June 6, 1963, page A.6.) And the very trespass provision under which the students are being charged in this action (P. C. Section 602(d)) was amended during the height of the sit-in demonstrations to curtail drastically its scope and impliedly prohibit its application to the sit-in demonstrators.

Non-violence as a justifiable technique has indeed achieved international support and standing. The 1960 Nobel Peace Prize was awarded to Mr. (ex-chief) Albert John Luthuli of South Africa because "in spite of the unmerciful South African race laws, Luthuli has always urged that violence should not be used." As President-General of the African National Congress, Luthuli was a leader in the 1953 anti-apartheid sit-in demonstrations. The 1964 Nobel Peace Prize was awarded to Dr. Martin Luther King for his advocacy and use of non-violent techniques. Gunnar Jaohn, chairman of the Norwegian Parliament's Nobel Committee, said during the award ceremonies that King "is the first person in the Western world to have shown us that a struggle can be waged without violence." (The Christian Science Monitor, December 11, 1964, page 6.) Dr. King, in commenting on the prize, said:

I do not consider this merely an honor to me personally. . . , but a tribute to the disciplined, wise restraint and majestic courage of gallant Negro and white persons of goodwill who have followed a non-violent course in seeking to establish a reign of justice and a rule of love across this nation of ours. (New York Times, October 15, 1964, page 14.)



If a measure of acceptance has been accorded to the use of non-violent techniques in the cause of racial justice, the United States Supreme Court has tacitly recognized the justice of the sit-in techniques in refusing to uphold the sit-in convictions of those whose cases have reached the court. The rationale of the Court in overturning the convictions of sit-in demonstrators has varied from case to case. For example, in Bell v. Maryland, 84 S. Ct. 1814 (1964), the Court overturned the trespass convictions of persons sitting in in a Maryland restaurant on the ground that the lower court should consider whether the adoption of a public accommodations law after the convictions required dismissal. In Bouie v. Columbia, 84 S. Ct. 1697 (1964), the Court held that a state appellate court could not retroactively construe a trespass statute to cover remaining on property as well as entering upon it.

In the landmark case of Hamm v. City of Little Rock, 85 S.Ct. 384 (1965), the Court overturned sit-in convictions under the trespass laws of two states on the ground that the Civil Rights Act of 1964 abated the convictions. In reaching this conclusion the Court construed the Civil Rights Act, section 203(c) as prohibiting a trespass conviction of a person who sat in in a restaurant covered by the act. In doing so, the Court said: "Although we agree that the law generally condemns self-help, the language of section 203(c) suggests a conclusion that non-forcible attempts to gain admittance to or to remain in establishments covered by the Act, are immunized from prosecution. . ." [Emphasis added.]

The Court by such construction legalized non-violent sit-in demonstrations in public accommodations covered by the act. Moreover, in applying the Civil Rights Act to invalidate retroactively state trespass convictions occurring before passage of the act, the Court recognized the basic injustice of punishing persons for acts of racial conscience in pursuance of goals which the Civil Rights Act recognized as just. The Court said: "In short, now that Congress has exercised its constitutional power in enacting Civil Rights Act of 1964 and declared that the public policy of our country is to prohibit discrimination in public accommodations as there defined, there is no public interest to be served in the further prosecution of the petitioners."

And earlier the Court had emphasized that, "The peaceful conduct for which petitioners were prosecuted was on behalf of a principle since embodied in the law of the land." Anthony Lewis, commenting in the New York Times, said in respect to the decision, "From a practical point of view, the decision was doubtless a healthy one. More than 3,000 sit-in cases are pending, and most will be wiped out as a result. This will remove a final irritant from a situation that Congress was trying to calm in the 1964 Act." (New York Times, December 20, 1964.)

The principle contained in the Hamm case should be applied to the cases at hand. The great principles for which the students engaged in the demonstration, are near being achieved. The Academic Senate of the Berkeley campus has adopted overwhelmingly a set of principles which reflect the entire set of just claims of the students. And while these principles have not yet been fully agreed to by the Administration and the Regents, they have been substantially granted. To dismiss the prosecution of the students at this time would "remove a final irritant from a situation that" the University has now largely redressed.

\* \* \* \* \*

The Free Speech Movement of Berkeley students--like the Northern Student Movement on other campuses across the country from New Haven to Palo Alto--is clearly an instance of a national awakening of concern and commitment on the part of American youth to the significant action and passion of their time. To be sure, few of the forms which that involvement is taking are safely beyond criticism; not many of them are conventional, and none is cautious. "Because this is a generation of youth driven by a need to act, to participate, to make their voices heard," in the words of the Associated Press report quoted earlier, "these are young men and women impatient and sometimes angry with the slow tide of human affairs."

That impatience and indignation is, on the record, neither nihilistic nor anarchistic. It is not even, unlike the characteristic student movements of the depression generation, ideological in character. It is instead a deeply moral indignation, aroused by the confrontation with palpable injustice and inequality, and marked not by hard-core calculation but by passionate identification with other Americans who are culturally deprived and politically disinherited. It is scarcely surprising that, in their attention to the violated rights of others, these students should become alerted to their own civil rights. Nor is it surprising that, on occasion, their valor should outstrip their discretion or their reach exceed their grasp.

What is surprising is that their collective undertaking is not more generously understood and their idealism not more widely shared. For this "new generation of Americans" altogether meets the specifications laid down by President John F. Kennedy in his Inaugural Address. They are, that is to say, "unwilling to witness or permit the slow undoing of those human rights to which this nation has always been committed, and to which we are committed today, at home and around the world." And they are answering, in force, but not in violence, the well-remembered summons of his trumpet: the "call to bear the burden of a long twilight struggle, year in and year out, . . . a struggle against the common enemies of man: tyranny, poverty, disease and war itself."

[NOTE: THE APPENDICES IN SUPPORT OF THIS SUBMISSION ARE NOT HERE INCLUDED]

Monday, January 25, 1965

"Open Letter to Professor J. ten Broek" by Professor David Louisell, Law.

You have been quoted in the press as saying that the techniques employed at the Dec. 2-3 sit-in demonstration have been "sanctioned by our courts, including the Supreme Court ..."

If this is meant to imply that the Supreme Court has sanctioned illegal sit-ins, it is misleading.

The Supreme Court, when it has set aside sit-in convictions in the South, has been careful to point out that it has done so only because they were based on state laws which were themselves in conflict with paramount federal law.

To misrepresent that the Supreme Court has sanctioned all sit-ins would do no service to the Court or to the Constitutional liberties it is sworn to protect.

Just last Monday in Cox v. Louisiana the Supreme Court said: "The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy...."

"We emphatically reject the notion...that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech." (33 Law Week 4101, Jan. 18, 1965).

The tragedy on the Berkeley Campus calls for the utmost understanding and compassion for all who were misled, especially when they were highly motivated. But I feel sure you will agree that it does not call for distortion of judicial opinion or denial of the truth.



## A Statement on Freedom and Responsibility

The faculty has expressed, by overwhelming majority, its desire that only minimal restrictions be placed on student political activity, including advocacy. Absence of unreasonable restrictions is essential both to the healthy pursuit of truth and knowledge in a University and to the guarantee of the students' common freedoms as a citizen.

Also essential to the pursuit of truth and knowledge is immunity from forced action, whether that force comes from within or without the campus community. There is no restriction that can damage this pursuit more deeply than does the use of force as a means of persuasion. Nothing is more alien to the free and unemotional consideration of issues than the wielding of threat and the initiation of overt physical acts designed to win a point in lieu of intellectual debate. This judgment must apply as much to the "sit-in" and to "civil disobedience" on the University campus as it does to the use of police force and physical violence in retaliation thereto.

Concerning the guarantee of the common freedoms, it is imperative that all members of the academic community, faculty and students alike, accept and discharge the responsibilities implied by such freedom. Each student should receive full rights as a citizen and he must, at the same time accept full responsibility as an individual, for his actions. He must be accorded, indeed, he should welcome, the same treatment before the law as any other citizen. He is entitled to no special plea for leniency under the law, neither based upon exceptional talent, nor upon claim of high principle, nor upon dilution of individual responsibility through numbers. In fact, those possessing unusual intelligence and motivated by high principle -- the hoped-for leaders of tomorrow -- are the last who should look for or be allowed to find refuge in a crowd. They are the last who should wish or be encouraged to seek escape from their individual responsibility. They are the first who should recognize and be told that a laudable goal is demeaned, even defaced, by unscrupulous actions in its cause.

George C. Pimentel  
Professor of Chemistry  
University of California  
Berkeley  
January 22, 1965