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## Richard W. Jennings and the Academic Senate: A Strong Hand in Troubled Times

*Herma Hill Kay*†

I was present at every meeting of the Academic Senate during the two-year period that Professor Richard W. Jennings served as Chair, and can testify that the campus was extremely fortunate to have had him at the helm of the Senate during the tumultuous 1964-65 year of the Berkeley Free Speech Movement. His strengths came both from his legal training, which gave him a deep understanding of the concepts of due process and orderly procedure, and from his talent as a presiding officer. Throughout the tense, crowded meetings, he presided over the debate with a calm deliberation that created an atmosphere of professionalism which went far to ensure a full discussion of the issues. As an ex officio member of the elected Emergency Executive Committee, he effectively represented the Senate. He brought a seasoned and informed view of the campus to the discussions. His reputation and analysis were helpful in establishing communications with the Regents.

As this brief account will show, the faculty was deeply divided within itself, and, at times, with the campus and university administrations over the underlying issues raised by the Free Speech Movement. When tempers flared, and matters threatened to get out of hand on the Senate floor, Chair Jennings guided the deliberations by his sense of fairness, his sure knowledge of procedure, and his lawyerly instinct for due process. Although he was not without critics—thirty-three members of the Senate, including two of his colleagues in the law school, sought to present a motion at the April 5, 1965, meeting depicting the Senate's proceedings since December 1964 as "characterized by haste and pressure ill-befitting a body of scholars whose actions and decisions should follow unhurried deliberation and careful study of evidence" and going on to propose a series of procedural changes<sup>1</sup>—he plainly enjoyed the support of virtually all of the faculty. Ironically, the motion presented by the thirty-three members was itself ruled out of order for failing to give sufficient notice of an intent to amend the Senate by-laws and was referred to the Committee on Rules and

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† Dean and Barbara Nachtrieb Armstrong Professor of Law, University of California, Berkeley, School of Law (Boalt Hall); Chairperson, Berkeley Division of the Academic Senate, January 1, 1973 to September 30, 1974.

1. Minutes of the Berkeley Division, University of California Academic Senate 23 (Apr. 5, 1965) (all Minutes noted here are housed at the Academic Senate building, University of California, Berkeley).

Jurisdiction for study.<sup>2</sup> When I became Chair of the Academic Senate in 1973, Richard Jennings was my model and my inspiration.

Imagine Richard W. Jennings presiding over a meeting of the Berkeley faculty. The date is October 13, 1964. He is the new Chair of the Berkeley Division of the Academic Senate, and this is his first meeting. The campus is in turmoil. In September, Chancellor Edward W. Strong had withdrawn the campus entrance at Bancroft and Telegraph Streets as a free speech area.<sup>3</sup> In protest, students organizing against racial discrimination in the South had set up tables on Sproul Plaza to distribute literature and collect funds. In response, the Chancellor had ordered the tables removed. The Berkeley Free Speech Movement was born. Demonstrations and a sit-in in Sproul Hall on October 1 followed, and negotiations ensued in which U.C. President Clark Kerr participated. On October 2, President Kerr and the students had entered into an agreement providing in part for the appointment of a faculty-student-administration committee to resolve the matter. Kerr had refused to call in the police, but eight students had been suspended. The Academic Senate, under the leadership of Richard Jennings, was ready to deliberate upon the situation. Attendance in Dwinelle Auditorium, the customary meeting place, was higher than normal, with about 450 voting members (out of 1350) of the Division present.<sup>4</sup>

Jennings recognized Chancellor Strong, who told the faculty that the campus was undergoing "a trying period, during which communication among us on the campus has been difficult." He announced his appointments to the committee created by the October 2 agreement, noting that the situation "raises the question of the University's right and responsibility to control its own affairs." Following the Chancellor's statement, Chair Jennings recognized Professor Charles Muscatine, who moved that the Senate declare that "an atmosphere of free inquiry and free exchange of opinion is essential to university teaching;" that "the Senate favors maximum freedom for student political activity;" and that the matter be referred to the Senate Committee on Academic Freedom for inquiry and a report back as quickly as possible. The temper of the meeting can be seen from an amendment proposed to the Muscatine motion which would have inserted the words "within the law" after the word "freedom." The amendment was defeated, and Muscatine's motion passed.

But other voices demanded attention. Chair Jennings recognized Professor E.S. Rogers, who offered a sense motion to the effect that the faculty "does not condone extreme measures, such as civil disobedience, in

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2. See Minutes of the Berkeley Division, University of California Academic Senate at iii (May 10 and 13, 1965).

3. This paragraph draws on my own recollections and conversations with Professors Emeritus Earl F. Cheit and Robert Cole.

4. See Minutes of the Berkeley Division, University of California Academic Senate at i (Oct. 13 and 15, 1964). The next four paragraphs draw from the minutes of the October 13 and 15 meetings.

an attempt to right an inequity, imagined or real, in a law, regulation, or interpretation of a law or regulation, when legal means for so doing exist and have not been fully employed." This motion was seconded, but failed to carry. Subsequent motions, including one to the effect that the Academic Senate did not judge the recent actions, another that would have applauded President Kerr for his decision "not to use police violence against our students," and a third that called upon the Chancellor to terminate the suspensions of the eight students, were seconded, but laid upon the table. A motion by Professor Seymour Martin Lipset calling upon all parties in the dispute to make full use of the joint faculty-student-administration committee in order to resolve the dispute in a peaceful and orderly fashion was passed after several proposed amendments were defeated.

As this account shows, the faculty was deeply divided over the issues raised by the Free Speech Movement. A single afternoon was insufficient to complete the agenda, and Chair Jennings adjourned the meeting to reconvene in two days' time, on October 15. When the meeting resumed, with about 475 members present, it became evident that the Administration was in a more conciliatory mood. President Kerr sent a statement to be read by Professor Arthur M. Ross, calling on the Berkeley Division to appoint a special ad hoc committee, whose recommendation would be advisory to the campus Administration, to hear the cases of the eight suspended students. Professor Ross then moved that such a committee be appointed, and his motion was passed without dissent. The hearing committee was subsequently appointed with law professor Ira Michael Heyman as its chair.

Jennings then recognized his colleague, Dean Frank C. Newman of the law school, who pointed out that the faculty's action two days earlier in adopting its motion favoring in maximum freedom for student political activity had been widely misunderstood as condoning lawlessness. He proposed a motion reiterating that statement, but at the same time reaffirming the faculty's "conviction that force and violence have no place on this campus." After the body defeated a substitute motion offered by Professor Charles Sellers declaring "that those lawful actions by which students have protested restrictions on student political activity have been in the best interests of the University," Newman's motion carried.

Meanwhile, The U.C. Board of Regents proposed to take action at its meeting scheduled for November 20 regarding the protests at Berkeley. Chair Jennings thereupon canceled the Senate's November 10 meeting and instead convened a special meeting on November 24 to give the Senate the opportunity to respond to any action taken by the Regents, if it chose to do so.<sup>5</sup> The Regents adopted a policy authorizing the designation of "certain

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5. See Minutes of the Berkeley Division, University of California Academic Senate at i (Nov. 24, 1964). This paragraph and the next draw from the minutes of the November 24 meeting.

campus facilities, carefully selected and properly regulated” to be made available to students and staff for political activity, so long as the facilities were used to prepare for “lawful off-campus action, not for unlawful off-campus action.” At the subsequent Berkeley meeting, Chancellor Strong submitted a statement which characterized the Regents’ policy as giving students “maximum political freedom.” The Chancellor also announced that although he had not fully accepted the report of the ad hoc faculty hearing committee, he had decided to give the eight students de facto suspensions. In a moving statement, the Chancellor appealed for the support of the faculty, conceding that “these troubles tend to polarize us, and to bring out the suspicions that the faculty always has of the administration.” He noted wryly that “as you know, we administrators are faculty members under the skin; we are amateur administrators—if we were not perhaps we would make fewer mistakes.” The Chancellor concluded by reiterating that “[o]ut of all the confusion and misunderstanding of the past two months has now emerged a condition of maximum lawful student political activity on campus” and declared himself ready “to work together with you in overcoming divisive and destructive forces, so that we may solve our mutual problems in the most constructive way.”

Apparently, these measures were not sufficient to satisfy all members of the faculty. Chair Jennings recognized Professor Lawrence W. Levine, who offered a sense motion that strongly supported greater political freedom for the students, beginning with these words: “[A] great university, dedicated to freedom of thought and responsible citizenship, cannot deny to its students the full exercise on campus of the rights guaranteed to citizens generally under the First and Fourteenth Amendments.” Chair Jennings, on the advice of the Parliamentarian, accepted this motion as a sense of the November 24 special meeting, but not as a sense of the Berkeley Division. Even with its import thus restricted, however, the motion ultimately failed to pass, as did a compromise substitute motion that would have had the Senate reaffirm “its support for maximum freedom for student political activity and its declaration that force and violence have no place on the Berkeley campus.” The close division of sentiment is shown by the vote on the substitute motion, which failed to carry by a vote of 261 for to 274 against.

When Chair Jennings convened the Academic Senate once again on December 8, with an overflow audience of about 1,021 members present,<sup>6</sup> the Free Speech Movement had held a well-publicized sit-in at Sproul Hall on December 2-3, followed by arrests of almost 800 demonstrators.<sup>7</sup> FSM leader Mario Savio had made his famous speech, and Joan Baez had

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6. See Minutes of the Berkeley Division, University of California Academic Senate at i (Dec. 8 and 10, 1964).

7. See *supra* note 3.

led the crowd in singing "We Shall Overcome." On December 7, the Administration had sponsored a meeting in the Greek Theater, which ended in a fiasco when Savio attempted to speak without invitation and was removed from the stage by police. Recognizing the intense interest in the faculty's response, Chair Jennings had made special arrangements to have the Senate's proceedings transmitted by loud speaker to the large crowd gathered outside Wheeler Hall. He recognized Professor Joseph Garbarino, Chair of the Academic Freedom Committee, who presented an oral report detailing the events that had occurred and offered the following motion (which had been drafted by a group of faculty calling itself the Committee of 200): that no disciplinary actions be taken against members of the University community for activities that had occurred prior to the date of the Senate's December 8 meeting; that "time, place, and manner" regulations be adopted to govern the conduct of political activity on campus; that "the content of speech or advocacy should not be restricted by the University"; and that future disciplinary measures in the area of political activity be determined by a committee appointed by and responsible to the Academic Senate.<sup>8</sup> Proposed limiting amendments were defeated, and Garbarino's motion was adopted by a vote of 824 to 115. The December 8 resolution vindicated the students' position and brought the extreme turmoil of the fall to an end.

After the resolution was adopted, Professor Henry Nash Smith moved that the Senate establish an Emergency Executive Committee to deal with problems "arising out of the present crisis" for the remainder of the academic year. The Committee would consist of Chair Jennings, *ex officio*, and six members of the Division to be elected by special ballot. A motion to have the six members appointed by the Committee on Committees rather than elected by the members of the Division was defeated, and Smith's motion carried.

The December 8 meeting was adjourned to reconvene on December 10, which it did with about 950 members present. Chair Jennings announced that he had once again arranged to have the proceedings made available by loud speaker to those non-Senate members outside Wheeler Auditorium. He then recognized Professor David Krech, who moved that the Committee on Committees be asked to appoint a special committee of seven to "investigate ways and means of improving the effectiveness of the Division, including especially the desirability of an elective standing Executive Committee" and to report back by March, 1965. The motion carried.

Jennings and the six elected members of the Emergency Executive Committee (Professors Raymond G. Bressler, Earl F. Cheit, Carl E.

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8. See Minutes of the Berkeley Division, *supra* note 6, at 1-ii. The next two paragraphs draw from the minutes of the December 8 and 10 meetings as well.

Schorske, Arthur H. Sherry, Robley C. Williams, and Arthur M. Ross, Chair) must not have had very much of a holiday season. They filed an Interim Report dated December 27, 1964, which described a crucial two-hour meeting with about a dozen members of The Board of Regents on December 17 in Los Angeles.<sup>9</sup> The committee delivered a memo drafted by law professor Robert Cole to the Regents, which pointed out that the Regents' policies contemplated that the First and Fourteenth Amendments to the U.S. Constitution applied to campus activity. On the following day, The Board of Regents declared that "the policies of The Regents do not contemplate that advocacy or content of speech shall be restricted beyond the purview of the First and Fourteenth Amendments to the Constitution." The Emergency Executive Committee met again in Los Angeles on December 23 with a special Regents' Committee appointed to consult with students and faculty concerning issues of campus political activity. On December 29, the Senate Committee on Academic Freedom filed its report detailing the "time, place, and manner" regulations that it intended to present to the Senate at a special meeting called by the Emergency Executive Committee for January 5, 1965.

Events moved swiftly in the New Year. When Chair Jennings convened the special meeting on January 5 in Wheeler Auditorium with about 850 members present, Chancellor Strong had resigned, and had been replaced by Acting Chancellor Martin Meyerson.<sup>10</sup> Jennings announced that arrangements had been made to transmit the proceedings to Pauley Ballroom for the information of those nonmembers of the Senate gathered there. Special arrangements had also been made to accommodate members of the press. Meyerson addressed the faculty and received applause. Professor Ross reported on the activities of the Emergency Executive Committee over the holiday recess. A motion by Professor Philip Selznick commending the Committee for its leadership was adopted. The report of the Academic Freedom Committee containing the "time, place, and manner" regulations was received and placed on file. The Division also received a report, prepared earlier in support of the Senate's December 8 resolution, from a sub-committee of constitutional law specialists, Professors Robert Cole, Hans Linde, and Robert O'Neill, who had been appointed by Dean Newman at the request of the Academic Freedom Committee to inform the Senate on the legal aspects of the free speech controversy.<sup>11</sup>

Although matters remained unsettled during the early months of 1965, Chair Jennings presided over three relatively routine Academic Senate

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9. See *supra* note 3.

10. See Minutes of the Berkeley Division, University of California Academic Senate at i (Jan. 5, 1965). The rest of this paragraph also draws from these minutes.

11. See Notice of Meeting, University of California Academic Senate 3-8 (Jan. 12, 1965).

meetings. The first was held on January 12 with about 375 members present;<sup>12</sup> the second on February 8 with about 106 members in attendance;<sup>13</sup> and the third on March 1 with about 300 members present (adjourned to March 8, and reconvened with about 350 members present), which focused largely on the proposed quarter system.<sup>14</sup>

In the second week of March, however, another crisis confronted the University. A group of students, dubbed "The Filthy Speech Movement," offered for sale on campus two publications, one called the "Spider," both containing obscene language. Acting Chancellor Meyerson moved to suppress their sale, and appointed an ad hoc committee consisting of members of the Senate Committees on Student Conduct and Student Political Activity chaired by Professor John R. Whinnery to investigate the matter and suggest appropriate discipline.<sup>15</sup> The incident inflamed some members of The Board of Regents, who scheduled an emergency meeting for March 13 to look into the matter. In response to this threat of regental micromanagement, both Acting Chancellor Meyerson and President Kerr tendered their resignations.

Apologizing for the shortened notice given of the date, Chair Jennings called a special meeting of the Academic Senate for March 12, explaining that because of the emergency Regents' meeting, he felt it necessary to elicit the sense of the Berkeley Division in response to the present crisis. The meeting, which was held in Pauley Ballroom and attended by about 1,250 members of the Senate, was open to the press, but closed to other nonmembers because of lack of space. The faculty overwhelmingly passed a motion (by a vote of 891 to 23) presented by Professor Arthur Ross, the Chair of the Emergency Executive Committee, supporting Meyerson and Kerr, urging The Regents not to accept their resignations, condemning "the willful flaunting of obscenity on this campus by a handful of students as a travesty of the legitimate uses of free speech," and rejecting "the false and invidious notion that the Berkeley campus has abdicated its responsibility to govern itself or maintain academic order."

On March 29, Chair Jennings again called a special meeting to receive the report of the Committee of Seven, which had been created pursuant to the resolution of December 10.<sup>16</sup> This meeting was attended by about 225 members, who considered the Committee's proposal to improve the

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12. See Minutes of the Berkeley Division, University of California Academic Senate at i (Jan. 12, 1965).

13. See Minutes of the Berkeley Division, University of California Academic Senate at i (Feb. 8, 1965).

14. See Minutes of the Berkeley Division, University of California Academic Senate at i (Mar. 1 and 8, 1965).

15. See Minutes of the Berkeley Division, *supra* note 12, at i. The next paragraph draws from the minutes of the March 12 and 18 meetings as well.

16. See Notice of Meeting, University of California Academic Senate 2 (Mar. 29, 1965).

effectiveness of the Division by establishing a new standing Committee on Senate Policy.<sup>17</sup> The debate was not completed, and the matter was put over for continued discussion at the regularly scheduled meeting on April 5. About 300 members attended the April 5 meeting, which approved the creation of the Senate Policy committee by more than a two-thirds vote.<sup>18</sup> The new committee was to be appointed in January, to have seven members, "chosen from other than Deans and Vice-Chancellors" and was instructed to present in March "its State of the Campus message, concerning the academic issues on which the Division needs to develop policy." The report was to be distributed to all members of the Division, who were to confirm or refuse to confirm the committee's membership depending on whether they agreed with its State of the Campus message.

The final Academic Senate meeting of the 1964-65 academic year was a special meeting called by Chair Jennings on May 27 to hear an oral report by Professor Ross, for the Emergency Executive Committee.<sup>19</sup> At the conclusion of the report, Professor Carl Landauer offered the following motion:

The Division expresses its gratitude to the members of the Emergency Executive Committee for their untiring efforts in bringing the influence of the faculty to bear on the course of developments in the University since December and, in particular, for helping to reconcile genuine freedom of political expression on campus with necessary academic order and the primacy of scholarship and learning. The faculty's accomplishments in these tasks have been largely their accomplishments; they deserve a place of honor in the history of the University.

The motion, which also requested that the members of the Emergency Executive Committee continue serving during the summer recess, passed without dissent. Professor Jennings was appointed for a second year as Chair of the Academic Senate.

The 1965-66 academic year was much less eventful for Chair Jennings and the Academic Senate than the preceding year. A new Chancellor, Roger W. Heyns, had been appointed to replace Chancellor Meyerson.<sup>20</sup> Faculty attendance at Academic Senate meetings was back to normal levels, ranging between a less than normal low of 78 members (at a recessed meeting held on November 15, 1965) and an unusual high of 475

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17. See Minutes of the Berkeley Division, University of California Academic Senate at i (Mar. 29, 1965).

18. See Minutes of the Berkeley Division, *supra* note 1, at i. The next two sentences draw from the minutes of the April 5 meeting as well.

19. See Minutes of the Berkeley Division, University of California Academic Senate at i (May 27, 1965). The rest of this paragraph draws from the minutes of the May 27 meeting as well.

20. See Minutes of the Berkeley Division, University of California Academic Senate at i (Oct. 11, 1965). The rest of this paragraph draws from the minutes of the October 11 meeting as well.

members on March 22, 1966 (when possible student disruption of the Charter Day ceremonies was under discussion, producing a motion that characterized any such protest as “a violation of the principle of freedom of expression and assembly”). Much of the year’s agenda was devoted to discussion of matters raised by the Senate Policy Committee, under the leadership of its chair, Professor Ira Michael Heyman, in its State of the Campus message, and the Special Select Committee on Education, chaired by Professor Charles Muscatine.

The Academic Senate has always considered itself an integral player in the Berkeley tradition of shared governance. Acting Chancellor Meyerson, addressing the Division on March 18, spoke frankly of some of the tensions arising from that tradition. He noted that the University of California was well known for expecting more committee service from its faculty than other major universities, and suggested that perhaps this system of faculty self-government should be re-evaluated to examine whether it worked as it was intended to do, going on to observe that faculty self-government would flourish best if the faculty were to concentrate on broad leadership and relinquish day-to-day detail to those with specific administrative responsibilities.<sup>21</sup> The initiatives undertaken by the Academic Senate during the Free Speech Movement made clear, however, that Meyerson’s view was not widely shared by the faculty. As long as distinguished professors like Richard W. Jennings are willing to put aside their scholarly work and step forward to serve the University in difficult times by giving an extraordinary measure of their time, judgment, and leadership, the Berkeley campus will remain a bastion of shared governance.

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21. See Minutes of the Berkeley Division, *supra* note 15, at iv-vi.