

Last week the Free University took City Hall to court and won. We had tried all summer to arrange for the use of a park in the Midpeninsula area for a Be-In. We were refused by everybody. Since a Be-In has been an integral part of the registration campaign which MFU has at the beginning of each quarter, we went after an injunction. With the help of Paul Robertson, Bob Palmer, Marc Porat, and myself, MFU attorney James Wolpman put together a brief close to an inch thick. He systematically documented the discrimination to which the Free University has been subjected, and argued that the ordinances, rules, and practices of Palo Alto and Menlo Park regarding the public parks were in violation of the First and Fourteenth Amendments to the Constitution of the United States. The case was heard in the U.S. Federal District Court in San Francisco by Judge Lloyd H. Burke. The judge did not want to make a ruling. He seemed to be uninterested in the constitutional question or in the discrimination which had been practiced. He indicated that he was impatient with both sides and that he thought that they ought to be able to reach some sort of agreement, and then declared a short recess. Neither side was willing to compromise. When the court was reconvened, and this became clear, Judge Burke abruptly declared that he had no choice but to rule that all the City of Palo Alto's ordinances and rules regarding the parks were unconstitutional. Since Palo Alto's El Camino Park was our first choice, Menlo Park escaped judgement, but it was abundantly clear that Menlo Park's case was even worse than Palo Alto's. The City of Palo Alto reacted to the decision with characteristic arrogance. City Attorney James Hildebrand made veiled threats about other ordinances and laws which might be enforced at the Be-In. City Manager George Morgan, whose disregard for his country's constitution was explored extensively in the court action, said: "I think the MFU is on notice now. Their conduct as members of the Palo Alto community will be judged from this point. If they have a right, they have a responsibility."

THE BE-IN STORY

by vic. lovell



The Be-In, as an institution, was the result of a modification in style and definition of the demonstrations and direct action tactics which were characteristic of the Civil Rights and Peace Movements in the early and middle 1960's. The idea was first suggested by one time Harvard University psychologists Richard Alpert and Timothy Leary, after they had become national spokesmen for the movement which grew up around the use of psychedelic drugs. From Sit-Ins, Teach-Ins, and so forth, they moved to Be-Ins, indicating a shift in focus from the political opponent, the particular issue, and the onlooker, to the participants, and to the underlying cultural unity which bound them together. The basic insight involved has now become a cliché: that the most important thing about social action is its effect upon the actor.

The first Be-Ins were held in San Francisco in the spring of 1966. From the beginning, they had pretty much their present form, and from the beginning, they were resisted by city authorities. Hitherto underground and scared, the psychedelic movement acquired a new sense of power that could only come from becoming aware of itself in a large public assembly. For the first time, the larger society was confronted with the extent to which young people had rejected the culture into which they were born. For the first time, the new counter-cultures, or "tribes" as they were called, were brought together: hippies, New Left activists, and outlaw motorcycle gangs.

Although those who came to Be-Ins did the things that Americans have always done when they gather together in parks, listening to music, dancing, listening to speeches, and eating food, it was rock music, in its most advanced form, speeches by prominent New Left leaders and psychedelic gurus, and macrobiotic food. Their Sunday Best was American Indian, Japanese Samuri, Colonial Virginia, Old West, Buddhist Saint, Early California Whore House, or naked bodies painted with dayglo colors. Safely lost in the enormous crowd, they could smoke pot right out in the open, while they watched the clouds go by and listened to the new sound.

And America freaked, from in front.

The Free University had its first Be-In in El Camino Park in the Spring of 1967. Contrary to what City Attorney Hildebrand told Judge Burke in Federal Court, the City of Palo Alto was thoroughly uncooperative from the very beginning. The City responded to our first request for a permit to use the park by demanding that we carry our own liability insurance. We didn't have much money then and the cost would have been prohibitive.

Roy Kepler talked with Ernest Besig of the Northern California ACLU. Besig wrote a letter to the City of Palo Alto indicating that the demand that we carry our own insurance was unconstitutional. The City backed down under pressure, but the petty harassmant continued. The same spring, they went to court to get an injunction to stop several

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people from holding Free University courses in their homes, on the grounds that this violated zoning ordinances regarding the proper location of educational enterprises. The Palo Alto police walked into the first Be-In and demanded that everybody stop dancing, since dancing was not explicitly mentioned on our permit. Typically, it took days of hassling with the city bureaucracy that year to get a permit. Whatever the permit said had to be rigidly adhered to. If the permit said that the event was to end at a certain time, the Palo Alto police would appear at that time on the minute and run everybody out of the park.

This year, things got worse. Representatives of the expensive highrise apartment house across Alma Street went to court to try to get an injunction to stop the summer quarter Be-In. They failed. They then went to the City and asked that the permit be withdrawn. The City was ready to revoke the permit less than a week before the Be-In, after all arrangements had been made. They were deterred from doing so by attorney Paul Robertson, representing the Free University, who told them that we would sue them if they did.

The summer quarter Be-In was the largest and most spectacular ever. Six rock bands played, including Charley Muselwhite, Sons of Champlain, Mad River, Notes from the Underground, and Frumius Bandersnatch. Speakers included Martin Primack of the Peace and Freedom Party, Martin Gorfinkel of the CDC, Timothy Leary, and Eldridge Cleaver. As announced by Herb Caen, MFU became the first university in the country to feature topless registrars. Shortly thereafter, we began to hear that there would be no more Be-Ins around the Midpeninsula.

In mid August, the Free University applied to the City of Palo Alto for a permit for the fall Be-In, to be held in late September. The permit was denied on the basis of rules written by City Manager Morgan a few weeks before. The ordinance which Judge Burke was later to declare unconstitutional gave the City Manager the power to write any rules he pleased, without review. We were presented with several versions of the rules. They prohibited amplified music, boisterous, disorderly, or offensive conduct, profane or obscene language, sale of goods or services, or distribution of any literature not permitted by the Recreation Department.



On Sunday morning, August 18, Marc Porat, MFU Events and Media Coordinator, and numerous other MFU members who lived in the vicinity of El Camino Park were rudely awakened from their dubious dreams by the sound of loudspeakers. Upon investigating, they found that the Palo Alto Lions Club was conducting a car show in the park. The admission was \$1.50. The program sold for 25¢. The amplification system had about twice the capacity of that employed by the Free University at the summer Be-In. Two bands played for close to three hours with the volume turned up high. The man who was supervising the car show told Marc that he had the City Manager's express permission to include amplified music in the program. The Lion's Club violated the rules with impunity all day while the police looked on. It blew our minds. We didn't really expect fair play, but we couldn't believe they would be so gross.

On August 14, about fifty MFU members attended a meeting of the Menlo Park Recreation Commission. On the agenda were two items of concern: approval of a policy statement regarding the use of the parks, and approval of a request for a permit to hold a Be-In in Burgess Park.

At this meeting, the principal problem dealt with was the loudness of amplified music. The Commission was worried that people who lived near the park would complain. Under consideration was a rule to place a 35 watt limit on amplified sound. Such a rule would effectively eliminate rock music from the parks.

It was necessary to spend a great deal of time educating the Recreation Commission, the members of which were totally ignorant of the aesthetics and technology involved. Loudness, it was pointed out, is measured in decibels, while wattage is a measure of electric current. With rock music, the amplification system is part of the instrumentation, so that to try to control volume is to violate artistic integrity, like tuning another man's violin. The sponsor has control only over voice amplification, and this must be adjusted to instrument amplification.

The Recreation Commission wanted an "objective" standard, that is to say, a physical measure of noise level. We argued that no physical index or combination of indices would yield a reasonable solution to what was essentially a human problem. We said that there were only two objective measures that were relevant: the number of people who attended the Be-In and the number of complaints received from people living near the park.

After raising a great many objections, and hearing our answers, the Recreation Commission voted to substitute a subjective standard for the 35 watt limit, and to grant the permit for the Be-In "on an experimental basis."

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When nearly everyone had left the meeting, after the key votes had been taken, several commission members made revealing comments. One, who had been most adamant about the volume of the music said he was not really concerned about loud noise. "The worst part is some of the radical speeches given, the radical speeches and a few of the radical elements."

Another commissioner, who had earlier denied indignantly that there was any value judgement involved in the permit decision, said she was concerned about "the character of the community."

"We have a right to set the standards of entertainment for the community," she said.

"Frankly, I think we were railroaded," another said. "If there's a complaint, that's it."

Two days later Menlo Park Chief of Police Victor I. Cizanckas submitted a memo to the City Manager explaining why he thought the Be-In ought not to be allowed. It consisted mostly of information apparently from the Palo Alto Police Department concerning events that allegedly happened at, or as a result of the Free University's summer quarter Be-In at El Camino Park.

The memo mentioned noises and traffic problems, a group of "hell's Angel-type motorcyclists," juveniles drinking alcohol, open use of marijuana, shoplifting at the Purity Market across the street, and obscene words used by speakers and singers over the public address system. "Arrests," the Chief wrote, "were not made for fear of incident."

After noting the problems met in San Jose and the Haight-Ashbury, Cizanckas told the City Manager that "the Menlo Park Police Department does not have the manpower necessary to police and protect participants and citizens of Menlo Park." He concluded: "If this affair is held, I will have to adopt a position of non-enforcement."

A meeting was arranged between Free University members and Cizanckas. Members of the Menlo

Park City administration also attended. The Chief said that he agreed with many of the things we were saying and doing, but that he would be derelict in his duty if he did not try to prevent the Be-In, since his department could not police it.

Wearing short hair and suits and ties, we were accommodating to the point of groveling. We offered to make an appeal over the P.A. system that there be no marijuana smoking or underage drinking at the Be-In. We offered to provide fifty MFU volunteers to be deputized and trained by the Menlo Park Police Department. He told us that he could not ask us to assume that kind of responsibility.

The Recreation Commission met the next week in special session to revoke the permit. MFU attorney Wolpman argued that even if Cizanckas' account of the earlier Be-In were true, the law enforcement problems were no greater than those posed by a high school or college football game, and probably a lot less. To substantiate this, he called upon Richard Rees, a senior at Menlo-Atherton High School. Rees talked about how noise, heavy traffic, use of speed and pot, underage drinking, and violence might be expected at high school football games and similar events. Furthermore, he said, in organizing a Be-In the Free University was exercising its constitutional rights to freedom of speech, assembly, and religion. The obligation of the Recreation Commission would be to see that park facilities are used by the public, as much as possible and in as many ways as possible.

Wolpman insisted that the responsibility of a law enforcement agency was not to interfere with the people's exercise of their rights or the commission's carrying out of its obligation but to protect the legitimate interests involved. If controversial gatherings could not be held for fear of possible difficulties in law enforcement, then all such gatherings could be effectively prohibited and the First Amendment would be dead. If public property could not be used by the public then it was not public at all, but was subservient to private interests. Chief Cizanckas stuck stubbornly to his guns. He alluded to recent disturbances in the Haight and other places in the Bay Area. When asked what additional manpower he would need to be sure that he could keep the peace if the Be-In were held, he said he would need about 50 extra men at a cost of about \$1750. Without these he could not guarantee adequate protection. Both the assembled citizens and the Recreation Commission were doubtful. What did he need all those cops for? How would he use them? Did he expect a full-scale riot?

The Chief simply reiterated his stand. Jim Wolpman challenged him, demanding to know his credentials as an expert in crowd control. He rose and answered. He seemed to be delivering himself of something deliberately held back.

"If I could, he would like to know my credentials in crowd control. It doesn't lie with Menlo Park exclusively. I spent eight years with the United States Marine Corps, in part as a crowd control expert. I was attached to the State Department. I worked in Jordan, Syria, and Lebanon during extensive riots by nationals. I was in charge of protection of foreign dignitaries and protection of American life and property in those foreign countries.

I know what bad crowd situations are, and how many people I have to have to take care of them. We have had minor disturbances in East Menlo Park over the last few years, and I have been responsible for the crowd control and restoration of order in those cases. I taught riot control training, crowd control to the United States Marines at Kaiwena Bay, Hawaii, where I was a military police supervisor. In my life time I have probably seen twenty-five riots..."

Which brought it all back home. After suggesting that MFU might pay for the extra policemen that would have to be kept on duty, the Recreation Commission voted to revoke the permit.

It would be tedious to recount, at this point, similar interactions which we had with Stanford University and San Mateo County. Again, the explicitly political character of the discrimination involved was fairly obvious. Stanford University allowed our political opponents, the National Service Foundation, to use Frost Amphitheatre for a bourgeois Be-In earlier this summer. The program included collecting money, amplified music and speeches. For those new to the Free University, National Service Foundation is pushing a program which in effect would extend present channeling of manpower by the Selective Service System. When explaining their refusal to let MFU use Frost for a Be-In, Stanford administrators stressed the undesirability of having anything which had the character of a political rally by an outside organization on Stanford land.

What are the stakes involved, which make the establishment resist a Be-In so strenuously? It seems to me that a great many important questions are raised by this history, and that much may be learned from what has happened to us.

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"...we have a right to set the standards of entertainment..."

...did he expect a full-scale riot?

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It became clear, when we talked to those who make the decisions, that their heads were in a very funny place. Their logic seemed to be that if there were no Be-Ins then there would be no pot smoking, no shoplifting, no outlaw motorcycle gangs, no underage drinking, no problems with noise and traffic, and no riots. They seemed to feel that the manifest deterioration of the present social order is brought about by Be-Ins and will end or at least be contained if they are not allowed.

Those of us who have been most involved in the Be-In struggle have perhaps acquired some feeling for how it is to be Black in the United States outside of the South. The discrimination is always there but never out front, and even those who practice it most blatantly seem to be largely unconscious of what they are doing. So it is that noise and traffic problems are created by the Southern Pacific train, the Lions Club, and the Stanford football games with impunity, and so it is that the National Service Foundation can do its political celebration in Frost Amphitheatre. When confronted by Free U. members whom he became eager to meet with after the downtown demonstrations, City Manager George Morgan repeatedly denied that he had discriminated against us. What manner of man is this, who having personally written a set of rules obviously designed to exclude MFU from the parks, and having then personally been responsible for allowing another organization to violate all those rules, can then indignant and straightfaced claim that he is only trying to be fair to all? If we are the new niggers then we had better learn what the old niggers have already learned: that all white men are bigots until proved otherwise.

The struggle for a Be-In location raises serious questions about the efficacy of going through the channels and structures through which we have become accustomed to relate to this society and those who have power in it. We have had Be-Ins. The City of Palo Alto is now compelled to allow us to have at least one more Be-In. By making the ruling which we forced them to make, Judge Burke has set a precedent which will be useful to others all over the United States who are involved in the same struggle. Have we won a victory?

We have succeeded in defending, at least for the time being, something which was important to us. It was something that we already had, and they tried to take it away from us. Next time they may succeed. They are likely to try again. The City of Palo Alto has many ordinances besides those which were ruled unconstitutional which they may invoke to interfere with the Be-In. They can easily write new ordinances regarding the parks. Because of what they have learned from us, they will know what pitfalls to avoid.

Let us consider the cost of this victory. Did we beat the system, or did the system beat us? Consider the hundreds and hundreds of hours, and the irreplaceable human energies that had been dissipated struggling with bureaucracies and trying to maintain our very vulnerable morale in the face of constant disappointments. And remember that this is happening within the context of a conflict in which the other party has virtually limitless resources at his disposal and we have almost nothing, not even our own labor power, because he can afford to employ us whereas we cannot afford to employ ourselves at a wage which will insure decent poverty.

And finally, it is important to remember that we did not win because of our virtue, or our commitment, or our popularity, or our industry, but because we had a good lawyer. Jim Wolpman, who used to work for one of the top law firms in the Bay Area, spent over a hundred hours working on the case, needless to say, for nothing. At the going rate, his time would be worth \$30-\$50 per hour, which gives some idea of the kind of money you need to get justice in this country if you don't happen to know an attorney who is idealistic. Jim was not optimistic about the future last time I talked to him. He expects to continue to spend a major part of his time working for us, but he points out that the City of Palo Alto has three lawyers working for them full-time and Warren Thoits has a whole law firm, while he has to earn a living for himself and his family.

I suggest that next time we simply take to the streets. It's cheaper, faster, more exciting, more communitarian, and more human.

the pied piper has come...

As we left the Federal Building after Judge Burke heard the case, an irate secretary accosted MFU General Secretary Fred Nelson. "Why don't you Communists go back to Russia?" she demanded. Fred, who is a liberal democrat asked her if she thought he looked like a Communist. She said he did because he had bangs.

Who are we, and what are we doing that brings on these grotesque reactions? A while ago, I was talking with a teen-ager who told me: "Once I was so desperate for someone to talk to that I almost talked to my mother." This Sunday, at the Be-In in El Camino Park there will be hundreds, perhaps thousands of such young people gathered together, comfortable

in their own world, and the straight world will have to endure the sight of them altogether in one place. A few of them may feel momentarily so secure as to light up a joint right out there in the open in the public park.

Up against the wall Palo Alto. The Pied Piper has come and gone. Don't you realize you haven't seen your children for months?

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