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**THE TRIAL OF
CHICAGO
SEVEN**

FEDERAL JUDICIAL CENTER

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The Trial of Chicago Seven

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THE CHICAGO CONSPIRACY TRIAL: A SHORT NARRATIVE

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The trial of political activists accused of inciting riots during the Democratic National Convention of 1968 attracted national attention and exposed the depths of political and cultural divisions at a crucial moment in the nation's history. The trial of the "Chicago Seven" became a defining event in public debates about the Vietnam War, the student protest movement, and the fairness of the federal judicial process.

The defendants and their lawyers used the courtroom as a platform for a broad critique of American society and an almost anarchic challenge to the legitimacy of governmental authority. The judge in the case displayed open contempt for the defendants, and his own unorthodox behavior threatened public confidence in the judiciary. The nearly five-month long trial illustrated the contentious and often theatrical nature of public affairs during the late 1960s and early 1970s.

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Planning for the Democratic National Convention of 1968

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In the fall of 1967, the Democratic Party decided to hold its 1968 national convention and the expected renomination of President Lyndon Johnson in Chicago. Mayor Richard Daley promised his city would be free of the civil disorders that had broken out in major cities in recent summers. By the summer of 1968, the prospects for a smooth convention had vanished. Johnson, in the face of growing protests against the Vietnam War and after assessing the surprising strength of Eugene McCarthy's campaign for President, withdrew in March from the race for the nomination. The assassination of Martin Luther King in April provoked devastating urban riots in Chicago and other cities. The assassination of Robert Kennedy in June further shocked the nation and complicated the race for the Democratic nomination. The spring of 1968 had also brought the Tet offensive against American forces in Vietnam and unprecedented student protests on university campuses. By August, many Americans believed the nation was in the midst of a profound political and cultural crisis.

Organizing protests at the Democratic convention

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In the fall of 1967, members of the National Mobilization Committee to End the War in Vietnam proposed a massive anti-war demonstration to coincide with the expected renomination of President Johnson in Chicago. The National Mobilization Committee was directed by David Dellinger, a long-time pacifist, who had organized the march on the Pentagon in October 1967. In early 1968, the National Mobilization opened a Chicago office directed by Rennie Davis and Tom Hayden, who were leading political organizers and former leaders of Students for a Democratic Society.

A small group of cultural radicals, including Jerry Rubin, who helped Dellinger organize the march on the Pentagon, and Abbie Hoffman, an organizer of political theater events, planned a “Festival of Life” to counter the Democratic “Convention of Death.” Rubin and Hoffman dubbed themselves the Yippie movement, later explained as an acronym for the Youth International Party. They planned outdoor concerts, nonviolent self-defense classes, guerrilla theater, and a “nude-in” on a Chicago beach.

In March, representatives of various left-wing and radical student groups met in Lake Villa, Illinois, to discuss coordination of the protests and demonstrations planned for the Democratic convention. Tom Hayden and Rennie Davis drafted a proposal for various protests of the Vietnam War and social injustice, culminating with a mock funeral march

to the convention hall on the night Johnson was to be renominated. The Lake Villa proposal advised that “the campaign should not plan violence and disruption against the Democratic National Convention. It should be nonviolent and legal.” The National Mobilization Committee sought permits for the proposed march, and the Yippie leaders applied for permits to sleep in the city parks, but in negotiations that continued to the week of the convention, the Daley administration refused almost all permit requests.

Confrontations in Chicago

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On the eve of the convention, Mayor Daley, citing intelligence reports of potential violence, put the 12,000 members of the Chicago Police Department on twelve-hour shifts and called for the governor to activate the National Guard. The U.S. Army placed 6,000 troops in position to protect the city during the convention. Both the police and the demonstrators organized workshops for training in the event of violence. The estimated number of demonstrators who came to Chicago during convention week was about 10,000, dramatically less than earlier predictions, but the police were determined to present a show of force and to enforce the 11:00 p.m. curfew in the parks.

Beginning on Sunday, August 25, the police and demonstrators clashed in city parks where many of the protests were staged and where visiting demonstrators hoped to sleep. For three nights, the aggressive police sweep through Lincoln Park was met with the demonstrators' taunting and occasional rocks. With tear gas and clubbings, the police forced demonstrators out of the park and into commercial areas, where demonstrators smashed windows. Police repeatedly targeted journalists and destroyed their cameras.

Violence escalated on the afternoon of August 28, when police at the week's largest rally charged through the crowd in Grant Park to prevent a man from lowering a U.S. flag. Many in the crowd met the police charge with a volley of rocks and improvised missiles. After some measure of peace

returned, David Dellinger attempted to negotiate a permit to march to the convention hall. When the city denied the permit and demonstrators attempted to regroup in front of one of the convention delegates' hotels, police lost control of the crowd and violently attempted to clear a street intersection. Television cameras recorded indiscriminate police brutality while demonstrators chanted "The whole world is watching." Inside the convention hall that night, Senator Abraham Ribicoff of Connecticut condemned the "Gestapo tactics on the streets of Chicago," while Mayor Daley, in full view of television cameras, shouted obscenities and anti-Semitic slurs at the senator. Hubert Humphrey won the presidential nomination that night, but the nationally broadcast images of police violence and of Daley's tirade became the lasting memories of the convention.

Investigating the violence

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The violence surrounding one of the essential rites of American democracy deepened the widespread perception that the nation faced a political and cultural crisis in 1968. The city of Chicago, the U.S. Department of Justice, the House Committee on Un-American Activities, and the presidentially appointed National Commission on the Causes and Prevention of Violence all responded with investigations of the violence. Within days, the Daley administration issued the first report, blaming the violence on “outside agitators,” described as “revolutionaries” who came to Chicago “for the avowed purpose of a hostile confrontation with law enforcement.” The chair of the House Un-American Activities subcommittee, Richard Ichord, suspected communist involvement in the demonstrations, but his hearings devolved into a bizarre preview of the conspiracy trial when a shirtless, barefooted Jerry Rubin burst into the hearing room with a bandolier of bullets and a toy gun. In December 1968, the report of the National Commission on the Causes and Prevention of Violence labeled the disturbances in Chicago a “police riot” and presented evidence of “unrestrained and indiscriminate police violence on many occasions.” The commission’s Walker Report, named after its chair Daniel Walker, acknowledged that demonstrators had provoked the police and responded with violence of their own, but it found that the “vast majority of the demonstrators were intent on expressing by peaceful means their dissent.”

On September 9, 1968, three days after release of the Daley report, Chief Judge William J. Campbell of the U.S. District Court for the Northern District of Illinois convened a grand jury to investigate whether the organizers of the demonstrations had violated federal law and whether any police officers had interfered with the civil rights of the protestors. The Department of Justice report, however, found no grounds for prosecution of demonstrators, and Attorney General Ramsey Clark asked the U.S. attorney in Chicago to investigate possible civil rights violations by Chicago police.

Indictment

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John Mitchell, the new U.S. Attorney General appointed by President Nixon following his inauguration in January 1969, worked with the U.S. attorney's office in Chicago to strengthen draft indictments of demonstrators, and Department of Justice officials asked U.S. Attorney Thomas Foran, a political ally of Mayor Daley, to remain in office and direct the prosecution. On March 20, 1969, the grand jury indicted eight demonstrators and eight policemen. Seven policemen were charged with assaulting demonstrators and the eighth policeman was charged with perjury.

The indicted demonstrators, soon known as the "Chicago Eight," were charged with conspiring to use interstate commerce with intent to incite a riot. Six of the defendants—David Dellinger, Rennie Davis, Tom Hayden, Abbie Hoffman, Jerry Rubin, and Bobby Seale of the Black Panther Party—were also charged with crossing state lines with the intent to incite a riot. The other two defendants, academics John Froines and Lee Weiner, were charged with teaching demonstrators how to construct incendiary devices that would be used in civil disturbances. If convicted of all charges, each of the defendants faced up to ten years in prison. The case entered the court record as *United States v. Dellinger et al.* These were the first prosecutions under the anti-riot provisions of the Civil Rights Act of 1968.

It was an unlikely group to engage in conspiracy. Dellinger, at 54, had been active in pacifist movements for years before the rise of the student protests of the 1960s.

Hayden and Davis were skilled organizers with focused political goals, and they had never been interested in the street theater and cultural radicalism of Hoffman and Rubin. John Froines and Lee Weiner were only marginally involved in the planning for the demonstrations, and their participation during the convention differed little from that of hundreds of others. The unlikeliest conspirator was Bobby Seale, who had never met some of the defendants until they were together in the courtroom and who had appeared in Chicago briefly for a couple of speeches during the convention. Seale was one of the founders of the Black Panther Party, which federal and state prosecutors had recently targeted in numerous prosecutions around the country.

The eight were linked less by common action or common political goals than by a shared radical critique of U.S. government and society. Rennie Davis thought the government “lumped together all the strands of dissent in the sixties,” and Tom Hayden concluded that the government had “decided to put radicalism on trial.” On the witness stand, Abbie Hoffman dismissed the idea of any conspiracy among the eight defendants, adding, “we couldn’t even agree on lunch.”

Judge and jury

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The randomly assigned judge, Julius Jennings Hoffman, became as much of a symbol as any of the defendants. Judge Hoffman's imperious manner and apparent bias against the defendants inflamed tensions in what would have been a confrontational trial under any circumstances. At 73, Hoffman had been on the federal bench since his appointment by Eisenhower in 1953, and lawyers in Chicago described him as a judge who usually sided with the government attorneys. Judge Hoffman was proud of the efficiency with which he managed cases, and from the first encounters with the defense attorneys, he was determined to show that he would exercise strong control over the case. When four of the attorneys serving the defense during the pretrial proceedings withdrew from the case before the start of the trial, Hoffman held them in contempt, ordered their arrest, and had two of them jailed. A nationwide protest of prominent lawyers convinced Judge Hoffman to relent and accept the new defense team of William Kunstler and Leonard Weinglass. Throughout the trial, Kunstler and Weinglass aggressively challenged Judge Hoffman's procedural rulings, which almost uniformly affirmed the motions of the prosecution.

In his examination of prospective jurors, Hoffman ignored all but one of the questions submitted by the defense attorneys and never asked potential jurors about pretrial publicity or about their attitudes toward student radicals or the Vietnam War. The jury of ten women and two men was

selected in a day. Within a week, Hoffman learned that the homes of two jurors had received identical letters saying that the Black Panthers were watching them. After one of those two jurors acknowledged that she could not be impartial in light of the threat, the judge replaced her with an alternate juror and sequestered the remaining jurors for the duration of the trial. Seale denied any Black Panther involvement with the letters.

A mistrial for Bobby Seale

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Conflict over the defense attorneys reemerged when Bobby Seale refused to be represented by anyone other than Charles Garry, who originally agreed to represent the defendants but remained in California because of an illness. Judge Hoffman refused Seale's subsequent request to represent himself, and Seale responded with a barrage of courtroom denunciations of the judge as a "pig," a "fascist," and a "racist." When the prosecuting attorney accused Seale of encouraging Black Panthers in the courtroom to defend him, the proceedings degenerated into worse shouting matches. Seale condemned the judge for keeping a picture of the slave owner George Washington above the bench, and Hoffman then followed through on his repeated warning to restrain Seale. In what provided for many the indelible image of the trial, Judge Hoffman ordered U.S. marshals to bind and gag Seale before his appearances in the courtroom. Hoffman allowed Seale in court without restraints the following week, but when Seale argued for his right to cross-examine a witness, Judge Hoffman sentenced him to four years in prison for contempt of court and declared a mistrial in the prosecution of Seale. The Chicago Eight were now the Chicago Seven.

The government's case

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Seale's attempts to cross-examine witnesses came as the government presented its case against the defendants. Led by Thomas Foran and Assistant U.S. Attorney Richard Schultz, the government prosecutors relied primarily on the testimony of undercover policemen and informers. Police officer Robert Pierson described how he let his hair grow, rented a motorcycle, and dressed in biker clothes for convention week. He testified that he heard Abbie Hoffman say that the demonstrators would break windows if the police pushed them out of Lincoln Park for a second night, and that Rubin, Seale, and Davis had urged crowds to resist the police or to employ violence. William Frapolly, another policeman, told the court how he enrolled in an Illinois college, grew sideburns and a goatee, and then joined Students for a Democratic Society, the National Mobilization Committee, and other peace groups. Frapolly testified that he had attended various planning meetings and that he had heard nearly all of the defendants state their intention to incite confrontations with the police and to pro-mote other civil disturbances. He also testified that Wiener and Froines had openly discussed the use of incendiary devices and chemical bombs. The government called 53 witnesses, most of whom recounted similar encounters with the defendants.

The defense strategy

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The defendants and their attorneys went well beyond the rebuttal of the criminal charges and sought to portray the proceedings as a political trial rather than a criminal prosecution. In their legal arguments, in their courtroom behavior, and in their numerous public appearances, they challenged the legitimacy of the court and the judge as well as the substance of the indictment. The trial became for the defense an opportunity to portray the dissent movement that had converged on Chicago for the Democratic Convention.

The defense called more than 100 witnesses, many of them participants or by-standers in the clashes between the police and the demonstrators. The jury heard repeated testimony about unprovoked police violence and the extensive injuries among the demonstrators. Well-known writers and performers, including Allen Ginsberg, William Styron, Dick Gregory, Norman Mailer, Arlo Guthrie, and Judy Collins, testified to the peaceful intent of the defendants. The judge denied the request to subpoena President Johnson. Mayor Daley appeared as a defense witness but said little as the judge upheld the government's objection to most of the defense questions.

Abbie Hoffman and Rennie Davis were the only defendants to testify. Abbie Hoffman described himself as a resident of the Woodstock Nation and an orphan of America, and he offered a lengthy narrative of his involvement in politics and the origins of the Yippie movement. Davis

recounted his role in the organization of the demonstrations and his encounters with the police during the convention. On cross-examination, the government attorneys attempted to establish that use of the words “revolution” and “battle” constituted incitements to riot, but the exchanges with the defendants made clear how difficult it was to connect demonstrators’ rhetoric with the violence in Chicago.

Procedural disputes

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Much of the trial was consumed by arguments over procedure. Even before the trial started, Judge Hoffman granted only thirty days for pretrial motions rather than the six months requested by the defense. The judge denied the defense attorneys' access to government evidence obtained without a warrant and barred the defense from submitting the Lake Villa document in which Hayden and Davis set out their nonviolent strategy. Judge Hoffman prohibited former Attorney General Ramsey Clark from testifying about his opposition to prosecution of demonstrators, and Hoffman sharply limited the defense lawyers' ability to question Mayor Daley. Frequently the trial was interrupted by arguments over seemingly petty questions: Could the defendants distribute birthday cake in the courtroom? Could the defendants use the public restrooms, or should they be limited to the facilities in the holding rooms? Could the musician witnesses sing the songs they performed at demonstrations, or was the judge correct in insisting that they recite lyrics?

Court theater

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For the public that followed the trial in the daily media, the substantive arguments and procedural questions were overshadowed by the intentionally subversive behavior of the defendants and the high-handed dramatics of the judge. Jerry Rubin pleaded not guilty with a raised fist. When introduced to the jury, Abbie Hoffman blew them a kiss (and Judge Hoffman ordered them to “disregard that kiss”). The defendants often refused to rise when so instructed. On the day of the Moratorium to End the War in Vietnam, the defendants draped a Viet Cong flag over the defense table. Throughout the trial various defendants called out obscenities and labeled the judge and prosecutors liars or Gestapo officers. In the most theatrical display of contempt for judicial authority, Abbie Hoffman and Jerry Rubin entered the courtroom in judicial robes and then flung them to the floor and stomped on them.

Judge Hoffman was all too easily provoked by the antics of the defendants, and his own instinct for the theatrical added to the carnival atmosphere. By all accounts, his exaggerated reading of the indictment left the jury with no doubt about his opinion of the defendants’ guilt. He returned the defendants’ name calling and publicly referred to Weinglass as a “wild man.” Reporters described his “mimicking” voice as he read the Seale contempt convictions. Judge Hoffman defended himself against personal insults from the defendants, such as when he answered Seale’s cry of “racist!” with an account of his pro-

civil rights decisions. The defendants believed Judge Hoffman intentionally mispronounced their names, such as when he repeatedly called Dellinger "Dillinger."

Contempt and a verdict

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For all the apparent anarchy in courtroom, Judge Hoffman issued no contempt orders until the argument phase closed. Then, while the jury deliberated, the judge cited the defendants and their lawyers for 159 counts of criminal contempt and sentenced them to prison terms ranging from less than three months for Lee Weiner to more than four years for Kunstler. Some of the convictions were for courtroom outbursts and profanities, many were for laughter, and others were based on the refusal of a defendant to rise as the judge entered or left the courtroom. The lawyers' were repeatedly convicted of contempt for persisting in offering motions or challenging a ruling of the judge. The disparities in the sentences surprised many courtroom observers. Abbie Hoffman received a much shorter sentence for the cited instances of sarcasm and personal insults than Tom Hayden received for his challenges to the judge's procedural decisions.

After five days of deliberation, the jury on February 19 acquitted all seven defendants of conspiracy and acquitted Froines and Weiner on all charges. The jury found the five defendants (other than Froines and Weiner) guilty of traveling between states with the intent to incite a riot. Judge Hoffman imposed the maximum sentence of five years in prison on each of the defendants found guilty.

In a separate proceeding in the Northern District of Illinois, a jury acquitted seven of the eight indicted policemen. The case against the eighth was dropped.

Appeals

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The defendants and their attorneys appealed to the U.S. Court of Appeals for the Seventh Circuit for a reversal of the criminal convictions and the contempt citations. They argued that the anti-riot provisions of the Civil Rights Act were unconstitutional, that Judge Hoffman's prejudice against the defendants made a fair trial impossible, that they had been denied the right to present a full defense and that they had been denied the right to an impartial jury. They argued that the judge should not have waited until the end of the trial to issue contempt orders and that the conduct cited did not legally constitute contempt. They also argued that the excessive sentences for contempt violated the requirement for a jury trial in any proceeding resulting in greater than six months imprisonment.

On November 21, 1972, an appeals court panel of Judges Thomas E. Fairchild, Wilbur J. Pell, and Walter J. Cummings unanimously overturned the defendants' criminal convictions. The court of appeals found that Judge Hoffman had erred in not asking potential jurors about political and cultural attitudes or about exposure to pretrial publicity, that he had improperly excluded evidence and testimony, and that his failure to notify the defense of his communications with the jury was ground for reversal. In unsparing language, the court of appeals censured Judge Hoffman and the government attorneys for their open hostility toward the defendants and their failure to fulfill "the standards of our system of justice." Their demeanor

alone, the court concluded, was sufficient reason to reverse the conviction. The reversal left open the government's option of retrying each of the defendants individually, and the court of appeals reviewed the evidence that it believed a jury might find sufficient for conviction. In January 1973, the U.S. Department of Justice announced that it would not pursue any further prosecution. Only Judge Pell found the Anti-Riot Act to be unconstitutional, so that statute stood.

On May 11, 1972, in a separate proceeding, the same panel of judges on the court of appeals had declared some of the contempt charges against the lawyers to be legally insufficient, and the court reversed all other contempt convictions, which were remanded for retrial before another judge. Judge Edward T. Gignoux, of the U.S. District Court for Maine, was assigned by Chief Justice Warren Burger to preside at the retrial that began in October 1973. The government reduced the number of contempt charges and thereby avoided the requirement of the court of appeals that any defendant subject to more than six months' imprisonment be tried before a jury. Gignoux convicted Dellinger, Hoffman, Rubin, and Kunstler of a total of thirteen contempt charges, but the judge rejected the U.S. attorney's argument that "substantial jail sentences" were necessary to protect the judicial process and deter others of such misbehavior. Gignoux thought that the behavior of the defendants and their lawyers could not be considered "apart from the conduct of the trial judge and prosecutors. Each reacted to provocation by the other, and the tensions generated during four and a half months of so acrimonious

a trial cannot be ignored.” He was satisfied that the judgment alone preserved the integrity of the trial process.

Legacy

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The judicial rebuke of Judge Hoffman prompted only minor notice in the national media that had so closely followed the trial. In many ways the cultural and political moment that defined the trial had passed by the fall of 1972. Even the judges of the U.S. court of appeals felt the need to remind readers of their opinion of how divided the country had been in 1968. The killings at Kent State University in May 1970 had changed forever the youth protest movement, which lost much of its political focus. Left-wing political groups like the Students for a Democratic Society had since splintered, leaving older leaders like Tom Hayden permanently alienated from the increasingly violent agenda of groups like the Weather Underground. The federal government again relied on the Anti-Riot Act to bring charges against anti-war protestors at the Mayday demonstration in 1971, when Abbie Hoffman, John Froines, and Rennie Davis were among those arrested, but the U.S. Court of Appeals for the District of Columbia Circuit blocked most of the prosecutions, and the same court in 1973 found that the mass arrests of nearly 8,000 demonstrators had violated the Fourth Amendment of the Constitution. The Chicago trial had established no precedent for use of the Anti-Riot Act against political demonstrators. The trial of the Chicago Seven lived on less as a legal milestone than as a cultural marker of dissident youth culture in the 1960s and the political divisions surrounding the Vietnam War.

THE JUDICIAL PROCESS: A CHRONOLOGY

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September 9, 1968

Grand jury convened in the U.S. District Court for the Northern District of Illinois to investigate whether any demonstrators violated federal law and whether Chicago police officers violated the civil rights of demonstrators.

March 20, 1969

Grand jury in the U.S. District Court for the Northern District of Illinois indicted eight persons on charges of conspiracy to travel in interstate commerce with the intent to incite riots in Chicago. Six of the defendants were indicted on individual charges of traveling in interstate commerce with the intent to incite a riot, in violation of the Anti-Riot Act. On the same day, the grand jury indicted seven Chicago police officers on charges of depriving individuals of their civil rights and an eighth police officer of perjury before the grand jury.

April 9, 1969

Defendants in the conspiracy case were arraigned in the district court and pleaded not guilty.

September 24, 1969

Start of the conspiracy trial.

November 5, 1969

Judge Julius Hoffman declared a mistrial in the prosecution of Bobby Seale and severed his case from the remaining seven defendants. Hoffman also convicted Seale on sixteen counts of contempt and sentenced him to four years in prison.

February 14,1970

Judge Julius Hoffman convicted the seven defendants and their two attorneys of a total of 159 charges of criminal contempt for behavior throughout the trial.

February 19,1970

The jury acquitted all defendants of the conspiracy charge and defendants Froines and Wiener of all charges. The jury found the other five defendants guilty of violating the Anti-Riot Act.

May 11, 1972

The U.S. Court of Appeals for the Seventh Circuit reversed most of the contempt convictions, dismissed others, and remanded the remaining contempt charges for retrial by another judge in the district court. On the same day, the U.S. Court of Appeals for the Seventh Circuit, in a separate opinion, dismissed four counts of contempt against Bobby Seale and remanded the remaining twelve contempt specifications against Seale for retrial by another judge.

November 21, 1972