



THE CHICAGO CONSPIRACY TRIAL AND THE PRESS

Nick Sharman



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The project is dedicated to the memory of my sister Angela, my mother Moira and also to my uncle Geoffrey, who, despite his best efforts, was unable to see the project reach its completion.

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CONTENTS

1	Introduction	1
2	“My Wishes Are That a Lawyer Respect the Court”: Initial Representation of the Trial and the Lawyers’ Arrest	15
	<i>Introduction</i>	15
	<i>The Initial New York Times Framing of the Chicago Conspiracy Trial</i>	19
	<i>How Did the Lawyers’ Arrest Come About?</i>	25
	<i>The New York Times’ Representation of the Lawyers’ Arrest</i>	30
	<i>Comparison of the New York Times’ Coverage with That of the Washington Post</i>	40
	<i>Conclusion</i>	46
3	“The Orderly Administration of Justice”: The Chaining and Gagging of Defendant Bobby Seale	49
	<i>The Seale Incident in the Trial Record</i>	50
	<i>Framing Seale’s Protest Against His Treatment by Judge Hoffman</i>	54
	<i>Justification of Judge Hoffman’s Decision to Chain and Gag Seale</i>	60
	<i>Representation of the Defendants’ Views and Those of Other Opponents of Seale’s Treatment</i>	68
	<i>White Attitudes to the Black Panther Party</i>	78
	<i>Conclusion</i>	85

4	“The Use of Vile and Insulting Language”: The Voice of White Radicals	87
	<i>Abbie Hoffman on the Witness Stand</i>	88
	<i>The Frame of Humor</i>	94
	<i>Limitations</i>	102
	<i>David Dellinger and the “Barnyard Epithet”</i>	109
	<i>Conclusion</i>	116
5	“You Are a Disgrace, Sir, I Say You Are a Disgrace, I Really Say You Are a Disgrace”: The Voice of Antiwar: Rennie Davis	119
	<i>Aims and the Nature of Davis’ and Weiss’ Testimony</i>	122
	<i>Reporting of Davis’ Evidence</i>	128
	<i>Conclusion</i>	144
6	“The Exclusion of Authority”: Ramsey Clark’s Muted Evidence	145
	<i>The New York Times’ Coverage of Defense Testimony Leading Up to Ramsey Clark’s Appearance in Court</i>	148
	<i>Former US Attorney General Ramsey Clark</i>	155
	<i>The New York Times’ Coverage of Ramsey Clark’s “Attempted Testimony”</i>	157
	<i>Conclusion</i>	170
7	The Summation on the Conclusion of the Chicago Conspiracy Trial	173
	<i>Setting the Scene for the Verdict</i>	175
	<i>Conclusion</i>	200
8	Conclusion	203
	Bibliography	209
	Index	231

Introduction

On September 24, 1969, eight men went on trial in the Chicago courtroom of Judge Julius J. Hoffman. The eight men were charged under Title 18 of the Civil Rights Act of 1968, Sections 371, 231 (a) and 2101. The two key charges were that first during the Democratic National Convention held in Chicago in August 1968 they had conspired to come to Chicago for the purpose of inciting a riot. Second, during their time in Chicago they had also committed at least one deliberate act designed to incite a riot among the demonstrators at the convention. Two of the defendants, Lee Weiner and John Froines, were also charged under the act with teaching how to make and use an incendiary device to be used to disrupt the convention.¹ Known subsequently as the Chicago conspiracy trial, or colloquially as the trial of the “Chicago 8,” it brought together eight men representing the different strands of the radical movement, which had burgeoned during the 1960s. These defendants included the organizers of some of the main anti-Vietnam war organizations: Tom Hayden, Rennie Davis and David Dellinger, all of whom were leaders in the National Mobilization against the war. They also included two leaders of the Yippies, or Youth International Party, Abbie Hoffman and Jerry Rubin, who sought to bring change to American society by promoting an

¹ *United States of America vs. David T. Dellinger, Rennard C. Davis, Thomas E. Hayden, Abbott Hoffman, Jerry C. Rubin, Lee Weiner, John R. Froines and Bobby G. Seal* No. 69CRI80 at the Northern District of Illinois Eastern Division, located at Rice University Library [Hereafter referred to as the Trial Transcript] p. A53.

alternative lifestyle that included the abolition of money, the promotion of art over work, and the legalization of illicit drugs such as marijuana.² Also included was the leader of the Black Panther Party, Bobby Seale. The Panthers were a militant Black Nationalist organization, which sought the right of blacks to self-determination and control of their community free from what they regarded as the exploitation by white business and civic authority.³ Of the eight, the less-high profile, defendants were John Froines and Lee Weiner, who were both involved in the antiwar movement and had protested at the convention.

The Democratic Convention in Chicago had been a highly charged and conflict-ridden political event. Groups of demonstrators had sought permits to march and sleep in the parks during the convention to protest against the Vietnam War and to express the values of an alternative lifestyle. Chicago authorities denied them permits, and this meant nightly raids by police into the parks to enforce curfews and constant pursuit of protesters, who were said by the police to be demonstrating illegally in Chicago.⁴ When the dust had settled from the violent clashes, broadcast nightly on national news services throughout the country, the time came to apportion blame for what had happened in Chicago. The Walker Commission set up by the government to inquire into the events in Chicago concluded that most of the violence that occurred was perpetrated on the demonstrators by the police in what the report described as a “police riot.”⁵

Richard J. Daley, mayor of the city of Chicago, had other ideas about who was responsible for the breakdown of law and order, which had tarnished the image of his city during the Chicago Democratic Convention. In association with the newly appointed Nixon Administration Attorney General, John Mitchell, and US District Attorney for Chicago, Thomas

² See A. Hoffman, *The Autobiography of Abbie Hoffman*, New York, Four Walls Eight Windows, 2000, p. 165.

³ See “The Ten Point Plan of the Black Panther Party” quoted at the Web site of the Black Panther Foundation <http://www.blackpanther.org/TenPoint.htm>. Accessed January 21st, 2013.

⁴ J. Schultz, *No One Was Killed: Documentation and Meditation: Convention Week, Chicago, August 1968*, Chicago, Big Table Publishing Company, 1969. See Also Author Interview with John Schultz May 5th 2005.

⁵ J. Wiener (Ed.) *Conspiracy in the Streets: The Extraordinary Trial of the Chicago Eight*, New York, The New Press, 2006, p. 12 quoting the Walker Report. See also *The Official Report to the National Commission on the Causes and Prevention of Violence: Rights in Conflict: “The Chicago Police Riot”* (Aka the Walker Report) New York, New American Library, 1968.

Foran, a grand jury was convened, and the eight defendants were charged under the civil rights statute with conspiring and acting to incite a riot.⁶

The celebrity status of the movement leaders who made up the bulk of the defendants in the case meant that the trial received significant media coverage throughout the case. This coverage was only heightened by the large number of major incidents that occurred in the trial, including the arrest of four defense lawyers by the judge on the first day of the case and the chaining and gagging of defendant Bobby Seale by Judge Hoffman.

Despite the extensive media coverage and the significance of media reporting in shaping the memory of the case, scant attention has been paid in the scholarly literature to an analysis of the media coverage of the trial. An exception is Juliet Dee's article, which is the only academic article which significantly analyses the media's reporting of the case.⁷ Dee highlights the difficulties that the defendants had in getting their message across through the media, yet her article's relative brevity and the fact that it discusses a wide range of journals' reporting on the case means that there is much still to be said on the media coverage of the trial.

There has been a lack of academic attention devoted to the media reporting of trials generally. As Claire Wardle notes, "the ways in which the criminal justice issues are shaped in the media is an important topic, but one that has been under-studied in the field of communication."⁸ Wardle goes on to note that there has "been less analysis of newspaper coverage of trial courts" in the literature than even the space devoted to criminal justice issues generally.⁹ A further limitation, which Wardle notes, is the lack of comparison between the media coverage and the trial record of the case.¹⁰

This study thus fills a gap in the literature on the media reporting of criminal proceedings, focusing on the Chicago conspiracy trial. It also seeks to compare, where appropriate, the media coverage of the trial with the substantial trial record that exists as the official version of what occurred in the case.

⁶ See J. Anthony Lukas, *The Barnyard Epithet and Other Obscenities*, New York, Harper and Row, 1970, p. 5.

⁷ See J. Dee, "Constraints on Persuasion in the Chicago Seven Trial", in R. Hariman (Ed.) *Popular Trials: Rhetoric, Mass Media and the Law*, Tuscaloosa, University of Alabama Press, 1993.

⁸ C. Wardle, "The 'Unabomber' vs. The 'Nailbomber': a Cross-Cultural Comparison of Newspaper Coverage of Two Murder Trials", *Journalism Studies*, 4, 2, 2003, p. 239.

⁹ *Ibid.*, p. 240.

¹⁰ See *Ibid.*, p. 250.

There is another significant issue in the media reporting of trials, which has drawn attention in the literature. This issue, raised by Fox, Van Sickle and Steiger, and Wardle, is the tendency of media reporting of trials to ignore the substantive legal and other issues raised by controversial and high-profile cases.¹¹ This literature suggests that sensational reporting focusing on personalities and a simplistic framing of issues dominates the media representation of important trials. This study considers the extent to which the media coverage of the Chicago conspiracy trial reported on and acknowledged the substantive questions about the American justice system that the case raised.

Although other newspapers are considered as a point of comparison, the focus of this study is on the *New York Times*' coverage of the Chicago conspiracy trial. The *New York Times* occupies an exalted place in the American media landscape, and in all major surveys of the quality and influence of newspapers, the *New York Times* tops the rankings.¹² As Friel and Falk note, the "self-proclaimed goal of the *Times* is to provide readers with 'all the news that's fit to print.'"¹³ The paper is also seen as, and aspires to be, "the paper of record," the voice of what is occurring in society.¹⁴ It also has a significant influence in shaping both the media agenda as well as the views of influential people within American society. Friel and Falk critically analyze the *New York Times*' coverage of foreign policy and the limitations of this coverage. They state the *New York Times*

Occupies such an exalted place in the political and moral imagination of influential Americans and others as the most authoritative source of information and guidance on issues of public policy. It is on this basis that the *Times* has acquired its special status as the *newspaper of record* [my italics] in the United States, a trusted media source that supposedly is dedicated to truthfulness and objectivity regardless of political consequences.¹⁵

¹¹ See R. Fox, R.W. Van Sickle and T. Steiger, *Tabloid Justice: Criminal Justice in an Age of Media Frenzy*, 2nd edition, Boulder, Lynne Rienner Publishing, 2007, pp. 7–10 and Wardle, "The Unabomber" vs. The "Nailbomber", p. 250.

¹² See S. Teitz, "21 for the 21st Century: America's Best Newspapers", *Columbia Journalism Review*, 38, 4, 1999, pp. 14–16.

¹³ H. Friel and R. Falk, *The Record of the Paper: How the New York Times Misreports US Foreign Policy*, New York, Verso, 2004, p. 11. Despite the significant place that the authors acknowledge that the *New York Times* holds in the media industry in the USA they clearly acknowledge its limitations in reporting on foreign policy issues.

¹⁴ See *Ibid* p. 2.

¹⁵ *Ibid*.

Given the significant place which the *New York Times* occupied in American journalism and the respect granted to its reportage, it is the most appropriate vehicle for an analysis of the way the media represented an event such as the Chicago conspiracy trial involving high-profile, politically active defendants. The book considers the fundamental issue of what the *New York Times* did when faced with evidence of apparent egregious misbehavior by a judge, which did not fit its worldview, and that of its readership, of the sanctity and authority of the US federal court. Evidence of this judicial malfeasance is amply provided by the trial record and the court of appeal's subsequent judgment on the jury trial.¹⁶ When the judicial system was faced with a challenge to its legitimacy as a result of the conduct of Judge Hoffman in the case, how did the paper respond? The challenge was amplified by the attacks on the authority of major American institutions, which were occurring in the late 1960s, particularly over the question of the legitimacy of American conduct in Vietnam.¹⁷ Consistent with the suggestion of Wardle and Fox et al., this study argues that the *New York Times* did not take the opportunity to explore questions of the broader significance for the judicial system of Judge Hoffman's conduct of the case.¹⁸

This study demonstrates that when faced with significant evidence of judicial misbehavior the *New York Times* sought to manage what was perceived to be a crisis. In the early phases of the trial the paper's reporting sought to minimize criticism of the judge's actions. It did this in part by framing the case in terms of the conflict between the two sides in the trial and suggesting that both were equally blameworthy for the disruption that was occurring. On occasions, such as the judge's decision to chain and gag the Black Panther leader Bobby Seale, the *New York Times* justified the judge's decision to forcefully restrain the Panther leader in terms of the deliberately disruptive conduct of the black defendant and his other coaccused. As the trial progressed, following Seale's incarceration and his later severing from the case, the *New York Times'* coverage of the trial changed. Although the paper was reluctant to give voice to

¹⁶ See *United States of America vs. David T. Dellinger, Rennard C. Davis, Thomas E. Hayden, Abbott Hoffman, Jerry C. Rubin, Lee Weiner, John R. Froines* 472 F.2d 340 (1972) and *Trial Transcript*.

¹⁷ See T. Gitlin, *The Whole World is Watching: Mass Media in the Making and Unmaking of the New Left*, 2nd Edition, Berkeley, University of California Press, 2003, p. 12.

¹⁸ See Wardle, "The 'Unabomber' vs. The 'Nailbomber,'" p. 250 and Fox et al., *Tabloid Justice*, p. 1.

the defendants' views on the case, except when they were expressed in a humorous way with the evidence of Abbie Hoffman, the paper became more critical of Judge Hoffman's conduct of the case. This study makes a significant original contribution to the literature on the media coverage of the trial by identifying a turning point in the *New York Times*' coverage of the Chicago conspiracy trial. This turning point in the paper's coverage occurred with the exclusion of Attorney General Ramsey Clark from the witness stand. Clark's standing as a leading figure in the liberal establishment gave the *New York Times* license for the first time to criticize openly Judge Hoffman's rulings in the case. Although for the rest of the trial the *New York Times* overtly criticized the partiality of Judge Hoffman's rulings in the case, it continued to blame the defendants equally for the "farce" which the paper believed the trial had become. As a way of legitimizing the operation of the judicial system in the face of the evidence of its partiality displayed in Judge Hoffman's courtroom, editorially, at the end of the case, the *New York Times* privileged the role of the higher appeal courts. The paper editorialized that these courts would protect the defendants' rights and overturn any unjust rulings by Judge Hoffman.

This book shows that the *New York Times* did not seek to question the judicial system's authority or raise broader issues about its legitimacy following Judge Hoffman's conduct of the case.¹⁹

The study adds further to the literature on the media representation of dissent. The defendants were well-known activist leaders who engaged in protest, throughout the trial, against what they perceived as the unjust actions of Judge Hoffman. Todd Gitlin's classic study on the media representation of Students for a Democratic Society demonstrated how news media framed protesters as deviant by focusing on their disruptive and unusual acts with little reference to the reasons for their protests.²⁰ In a similar way the *New York Times*' coverage of the Chicago conspiracy trial framed the defendants' protests as instigated disruption to the case rather than as a direct response to perceived acts of repression by Judge Hoffman. Also, in the paper's representation of the evidence of the two defendants who testified in the case—Abbie Hoffman and Rennie Davis—this study argues that limited attention was given in the *New York Times*'

¹⁹ See Wardle, "The 'Unabomber' vs. The 'Nailbomber'", p. 250 and Fox et al., *Tabloid Justice*, p. 1.

²⁰ Gitlin, *The Whole World is Watching*, pp. 35–40.

coverage to the substantive political philosophy the defendants sought to espouse on the witness stand. Instead, in the case of Hoffman, the defendant's humor was foregrounded rather than any explanation provided of what Hoffman's humor meant as a symbolic challenge to the authoritarian rules of the court. Similarly, the *New York Times'* coverage of Rennie Davis' evidence failed to report on the defendant's attempts to introduce the Vietnam War as a central issue in the courtroom, which, as Davis recalled, was the central part of the rationale for his testimony in the trial.²¹

Recent literature on the media representation of protest has suggested that protesters have, in certain instances, received substantially more sympathetic coverage of their views and aspirations than Gitlin's original understanding of the media coverage of dissent would suggest.²² These writers suggest that the symbolic power and drama which protest groups can generate through protests, particularly in a new media world, can override the standard media frames that govern the media representation of dissent. Although mine is a historical study based on a major political event over 40 years ago, the work argues that, in this instance, the *New York Times'* coverage of the Chicago conspiracy trial was consistent with the earlier literature, which identified radical defendants' deviant conduct as the central frame in the coverage of dissent. This was the case even when this dissent could be said to have occurred in response to apparent official repression in the trial. This framing that emphasized the defendants' deviant conduct, even when it occurred in response to official repression, was evident even when the *New York Times'* reporter was observing the trial on a largely daily and full-time basis. Traditional studies on media representation of dissent have focused on media representations of protests in demonstrations, which are not fully observable in the same way as a trial in a small courtroom occurring over an extended period of time. This study argues that even when a reporter was able to more closely observe a trial, which at times turned into a demonstration, the media frames were still similar to those framing dissent at less closely observable events.

²¹ See Author Interview with Rennie Davis April 28th, 2005.

²² See, for example, S. Cottle, *The Racist Murder of Stephen Lawrence: Media Performance and Public Transformation*, Westport, Conn, Praeger, 2004; S. Cottle, "Reporting Demonstrations: the Changing Media Politics of Dissent", *Media, Culture and Society*, 30, 6, 2008, pp. 853–872; L. Lester, *Giving Ground: Media and Environmental Conflict in Tasmania*, Hobart, Quintus Publishing, 2007 and S. Cottle and L. Lester, (Eds.) *Transnational Protests and the Media*, New York, Peter Lang, 2011.

Although this work does not share the view of the new literature that protest was represented more favorably than earlier studies such as Gitlin's would suggest, it does demonstrate the view, supported by the new literature, that media representation of a major public event or issue can change over time. Cottle particularly has suggested that powerful symbolic acts of injustice and protest can transform public and media perception of an event.²³ In relation to the Chicago conspiracy trial, the symbolism of slavery and oppression that the chaining and gagging of a black defendant in a white courtroom had, and the growing evidence of judicial malfeasance, did lead to a change in the *New York Times*' representation of the trial. This change did not extend by any means to complete coverage of the defendants' views on what was occurring in the case, but it did acknowledge a greater level of criticism of the judge's handling of the trial.

One of the central features of this book is an exploration of the memories of many of the key participants in the trial. These memories have been tapped through their written memoirs and the conducting of extensive interviews with key participants in the events associated with the Chicago conspiracy trial. I have interviewed defendants, lawyers for the defense, close confidantes and those who worked with the defendants on the preparation of their trial strategy. I have also interviewed those who reported on the case for various media outlets. Unfortunately the prime reporter for the *New York Times* on the trial, J. Anthony Lukas, died before the commencement of the project.

The interviews provide a valuable tool for analyzing memories of the case in relation to events represented in the *New York Times*. They also illustrate in certain instances the way that "the paper of record's" coverage of the case influenced the memories of those who participated in it. The interviews give insight into the strategies the defendants sought to use in the case and the extent to which the *New York Times* and other media coverage responded and reported the trial in ways that were influenced by or reflected these strategies. In general the study demonstrates that the defendants, despite their status as high-profile public activists, were largely unsuccessful in getting the *New York Times* and other media to carry their message in coverage of the trial. There were exceptions, particularly in the later part of the trial, but even in cases when the *New York Times* did represent an issue in a way favorable to the defendants, it often used

²³ See Cottle, *The Racist Murder of Stephen Lawrence*, p. 3.

other more respectable sources, rather than the words or statements of the defendants, to convey these views.

One of the key methodological tools used to analyze the *New York Times*' and other media outlets' coverage of the Chicago conspiracy trial is framing. The concept of framing was pioneered by sociologist Erving Goffman. Framing recognizes that in order to make sense of the world people organize experience into little ideological frames which help simplify and manage complex reality.²⁴ Consider the way that the media framing of an event has important ideological consequences for the way in which an event is perceived by the public. In the context of the media representation of dissent, Graham Murdock, in his analysis of the media representation of a major London demonstration in 1970, argued that the prior media framing of the event in terms of whether violence would occur emptied the demonstration of "its radical political content."²⁵ By framing the lead up to the event in this context, attention was drawn away from the substantive issues on which the demonstration sought to focus. Instead public understanding, through the media framing, was focused on the form of the demonstration, which thus reinforced the idea in the public mind that demonstrations were to do with violence or nonviolence rather than to do with substantive issues of protest.

The use of framing has a long history as a method used to analyze the representation of media texts. This history is particularly apparent in the analysis of the media representation of dissent. Gitlin used frames to help understand the way that the media constructed the public understanding of the New Left in America in the 1960s. Recognizing the ideological impact that frames have in shaping our view of the world Gitlin states, "Frames are principles of selection, emphasis, and presentation composed of little tacit theories about what exists, what happens, and what matters."²⁶ As evidence of the importance which news journalists place on using frames to manage the mass of material that needs to be compressed into a tightly written newspaper article, Gitlin further states:

²⁴E. Goffman, *Frame Analysis: An Essay on the Organisation of Experience*, New York, Harper Row, 1974.

²⁵G. Murdock, "Political Deviance: the Press Presentation of a Militant Mass Demonstration", in J. Young and S. Cohen, (Eds.) *The Manufacture of News - Deviance, Social Problems and the Mass Media*, Constable, London, 1973, p. 160.

²⁶Gitlin, *The Whole World is Watching*, p. 6.

Media frames are persistent patterns of cognition, interpretation, and presentation, of selection, emphasis, and exclusion, by which symbol-handlers routinely organize discourse, whether verbal or visual [Gitlin's italics]. Frames enable journalists to process large amounts of information quickly and routinely.²⁷

Jules Boykoff, who has also written extensively on the media representation of dissent, has consistently used framing as a method of analysis.²⁸ As further evidence of the ideological function that frames have in drawing attention to one way of seeing the world as opposed to an alternative vision, Boykoff quoting Robert Entman, states:

To frame is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and or treatment recommendation for the item described.²⁹

Like all qualitative methodologies, framing has been criticized for the subjective quality of its analysis, but as the references from the above seminal studies suggest, it has become an established and recognized method for analyzing media texts. Consistent with Gitlin's own approach the use of framing is also combined with recognition of the historical and political circumstances in which the newspaper reporting of the trial took place.³⁰ As a historian I pay particular attention to seeing the *New York Times* and other newspaper reportage of the trial within the historical context of the 1960s. The transformative events of the 1960s, including the civil rights movement, the antiwar movement, the counterculture and the rise of Black Power and the Black Panther Party all were significant in influencing attitudes to society and protest at that time.³¹ The media coverage was highly influential in shaping the way radical acts of protest developed during this time. In seeking to understand the *New York Times'* coverage of the Chicago conspiracy trial it is vital to understand the paper's attitudes to institutions like the Black Panther Party and the protest

²⁷ Ibid., p. 7.

²⁸ See, for example, J. Boykoff, "Framing Dissent: Mass-Media Coverage of the Global Justice Movement", *New Political Science*, 28, 2, 2006, pp. 201–228.

²⁹ R. W. Entman, "Framing: Toward Clarification of a Fractured Paradigm", *Journal of Communication*, 43, 1993, p. 52.

³⁰ See Gitlin, *The Whole World is Watching*.

³¹ See D. Farber, *The Age of Great Dreams*, New York, Hill and Wang, 1994.

movement of which the defendants were leading players. It is these attitudes that help to explain the difficulties which the *New York Times* had in representing the defendants' perspective on what was happening in the Chicago conspiracy trial.

This work is organized around an analysis of six key incidents in the Chicago conspiracy trial. These incidents have been selected as they form key points of conflict that occurred within the trial and thus were significant in generating newspaper coverage. The incidents also represent different moments in the trial: one where the defendants' voice was silenced, as in the case of the chaining and gagging of Bobby Seale, and others where the defendants' voices were heard in the courtroom, as occurred with the evidence given by Abbie Hoffman and Rennie Davis. The focus on these key incidents and moments also enables the work to manage the mass of material coming out of a 5-month long trial. The trial transcript alone is over 30,000 pages, and the media coverage of the event is substantial. The detailed analysis of key incidents enables a more thorough analysis of specific media coverage to illustrate clearly the key facets of the *New York Times'* and other newspapers' coverage of the Chicago conspiracy trial.

The first of these incidents is the opening of the trial and the arrest of four defense lawyers by Judge Hoffman on the first day. This incident is the first point of major conflict between the judge and the defense, and analysis of the newspaper coverage presents an opportunity to consider the initial frames that the *New York Times* adopted to represent that conflict. The chapter demonstrates that the *New York Times* framed the lawyers' arrest as part of the conflict between the two sides in the case. In so doing the paper failed to fully represent the apparently unjust nature of Judge Hoffman's actions in arresting the four defense attorneys. The second incident analyzed is the chaining and gagging of one of the defendants, Black Panther leader Bobby Seale, by Judge Hoffman. This incident is probably the most famous of the case and the one which generated the most contempt sentences for the defendants as they sought to protest what they perceived as the unjust treatment and abridgment of Seale's rights in the courtroom.³² An analysis of the media coverage of the incident is also

³²See Preface by Ramsey Clark and Introduction by Harry Kalven from *Contempt Transcript of the Contempt Citations, Sentences, and Response of the Chicago Conspiracy 10*, Chicago, Swallow Press, 1970, for the complete list of contempt citations held against the defendants by Judge Hoffman.

central in understanding how at this stage the *New York Times* sought to manage the escalating conflict between the defense and the judge in the case. Justifying the judge's conduct of the trial by representing Seale's protests in the court as unjustified, the *New York Times* sought to manage the crisis of legitimacy for the judiciary that the spectacle of Seale's chained and gagged body created.

The next incident considered in Chap. 4 is the evidence of one of the two defendants who testified in the trial—Abbie Hoffman—and the revoking of the bail of another defendant David Dellinger for saying “bullshit” in the courtroom in response to what he perceived as false testimony from a prosecution witness.³³ Hoffman's testimony is the first legitimate opportunity the defendants had to voice their beliefs on the case in open court, so it is very important to examine how the *New York Times* represented those beliefs. As we will see, the *New York Times* framed Hoffman as non-threatening and humorous but failed to investigate the serious side of his political persona and thus partly muffled the political message he wished to convey on the witness stand.

Chapter 5 considers the evidence of the other defendant who testified in the case, Rennie Davis, and the success, or as we shall see the lack thereof, that he had in gaining media attention for his attempts to introduce the Vietnam War as an issue in the courtroom. This lack of success in Davis' attempts to bring the war into the courtroom is considered in terms of the *New York Times'* unwillingness to give coverage to a radical defendant's views that the war was symptomatic of broader problems in American society. Chapter 6 considers a significant turning point in the *New York Times'* coverage of the trial, the refusal of Judge Hoffman to allow former US Attorney General Ramsey Clark to appear before the jury. This chapter demonstrates the shift in the *New York Times'* coverage of the case, which occurred in response to the build up to and then exclusion of Clark from the witness stand.

The final chapter considers the way the *New York Times'* opinion and editorial writers summed up the meaning of the trial following the verdicts and the contempt sentences handed down to the defendants. The chapter demonstrates that in a final effort to manage the crisis of legitimacy that the trial had created for the judicial system, the paper's editorial voice looked positively to the higher courts to rectify any potential

³³ See J. Clavir and J. Spitzer, (Eds.) *The Conspiracy Trial*, London, Jonathon Cape, 1970, p. 529.

injustice that had been visited on the defendants by Judge Hoffman's conduct in the trial.

This work focuses particularly on five strands—the media coverage of dissent, the media coverage of trials, literature on the *New York Times*' representation of key issues, the literature that exists on the New Left and the 1960s, and the literature that exists on the media coverage of the Chicago conspiracy trial itself. It locates this book in the literature of media and communication studies as a historical analysis of American press coverage of the most newsworthy trial of the period.

“My Wishes Are That a Lawyer Respect the Court”: Initial Representation of the Trial and the Lawyers’ Arrest

INTRODUCTION

On September 24, 1969, the eight defendants charged with conspiring and acting to incite a riot at the Democratic Convention in 1968 went on trial in the Chicago courtroom of Judge Julius J. Hoffman. Within minutes of the trial beginning, Judge Hoffman had issued a bench warrant for the arrest of four defense lawyers who had sought to withdraw from the case by telegram. These lawyers had previously worked for the defense in preparing briefs for pretrial motions, and it had not been the intention that they act as defense counsel during the trial.¹ The judge, under the rules of the court, asserted that the lawyers needed to withdraw their appearance, previously registered for the defendants, in person from the case. The lawyers’ arrest was the first among many conflicts that were to occur between the parties throughout the 5-month trial. This chapter analyses the way the *New York Times* covered the start of the case and the arrest of the four defense lawyers. In reporting a 5-month trial, particularly one likely to invoke such strong feelings as the Chicago case, the initial representations are particularly important in establishing the meaning of the trial and the most significant issues to be considered. As this study shows, the frames

¹See Author Interview with Tom Hayden March 29th, 2005. The exception to this was Gerry Lefcourt, one of the four lawyers, who had been slated to appear as one of the defense counsel in the Chicago conspiracy trial. Lefcourt had to withdraw this appearance as he had been chosen to act as lead counsel in the “Panther 21” case in New York. See Author Interview with Gerry Lefcourt May 25th, 2005.

used by the paper from the day of the arraignment were still important in defining the meaning of the case when it concluded.

The chapter argues that the *New York Times* initially framed the trial as a clash between two warring and slightly absurd parties—the judge and the prosecution on the one hand, and the defendants on the other. This representation, which was prominent throughout the trial, had the effect of sharing the blame for the clashes that occurred in the courtroom between the defendants and Judge Hoffman. In so doing the paper was able to minimize criticism of Judge Hoffman’s handling of the case and uphold the authority of the federal courts and at the same time downplay the defendants’ suggestions that the trial was a deliberate act of repression aimed at stifling the antiwar movement. The broader significance of the conduct of the trial for the judicial system and society was thus not significantly considered.

The *New York Times* thus framed the lawyers’ arrest in terms of the conflict between the two sides. In so doing the paper did not fully consider the reasons for the judge’s actions in arresting the lawyers—reasons that, as demonstrated, did not reflect well on Judge Hoffman’s actions in the case. Although the level of opposition that the judge’s actions generated among lawyers throughout the country led the paper, over time, to recognize and, in some ways represent positively, the protests against his actions, it framed that protest around authoritative voices, rather than the voices of the defendants. This effectively affirmed liberal protest and at the same time marginalized more radical critiques of the trial.

By providing detailed evidence from the court transcript of the case, as well as comments from the court of appeal judgment and interviews with key participants in the trial, I demonstrate the ways that the *New York Times*’ coverage ignored or downplayed significant aspects of the judge’s handling of the early part of the case. These ignored aspects did not reflect well on Judge Hoffman’s actions in the early part of the trial.

Two important reasons can be suggested to explain the way that the *New York Times* reported on this early phase of the trial. The first involves the routines of journalism, the second the political interests of the paper as a representative of powerful interests in society. First, the routines of journalism, as Gitlin notes, are about “conflict, not consensus; the fact that ‘advances the story,’ not the one that explains it.”² The conflict between the two diametrically opposed and quite vociferous and colorful parties in

² Gitlin, *The Whole World is Watching*, p. 28.