

'Chicago 7' Convictions Overturned

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The riot convictions of the five remaining "Chicago Seven" defendants were reversed yesterday by the U.S. Seventh Circuit Court of Appeals in opinions highly critical of the judge and prosecutor at the tumultuous 1970 trial.

At the same time the Court of Appeals split, 2 to 1, in upholding the constitutionality of the 1968 federal riot law that was first used against the New Left demonstrators for their actions during the Democratic National Convention in Chicago four years ago.

All three judges agreed there was legally sufficient evidence for another trial but noted that there was also evidence which, if believed, "would lead a jury to acquit" a second time around.

The Justice Department, surveying the remnants of the massive riot conspiracy indictment returned against the original Chicago Eight in 1969, said no decision could be reached about another trial until the court's 121-page opinion could be studied.

Already awaiting a new trial on contempt citations are seven defendants and their lawyers. The court of appeals held last May that the case must be tried before a judge other than Julius J. Hoffman, the controversial jurist who presided at the four-month trial.

The five men whose guilty verdicts were set aside yesterday are David Dellinger, Tom Hayden, Rennie Davis, Abbie Hoffman and Jerry Rubin. A jury acquitted them in 1970 of conspiring to travel to Chicago to foment riot but found them guilty of individual violation of the federal riot act.

Two other defendants, John Froines and Lee Weiner, were acquitted on all counts but

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were cited for contempt of court. The eighth original defendant, Black Panther leader Bobby Seale, was severed from the trial and the charges dismissed because of illegal government eavesdropping.

The appellate judges could have sent the case back to the District Court on the basis of wiretapping alone, forcing the Justice Department to choose between disclosing the records of warrantless surveillance and dismissing the charges. In Seale's case, the government chose to abandon the prosecution.

Instead of ordering a limited remand to the lower court, the Court of Appeals went on to list half a dozen reasons why the accused men had been denied a fair trial, laying heavy stress on the conduct of Judge Hoffman and former U.S. Attorney Thomas A. Foran.

"We conclude that the demeanor of the judge and prosecutor would require reversal if other errors did not," the court said.

The court said it did not condone disruptive behavior by the defense camp and found their lawyers "often inadequate" in handling the case. But it said prosecutor Foran exceeded proper bounds of argument in inviting the jury to consider the defendants' courtroom demeanor when weighing whether they committed violence on Chicago's streets.

"Whatever contribution the defense conduct may have made to the deficiencies of this trial," the court said, they did not justify numerous remarks made by Foran and his staff and condoned by Judge Hoffman. The prosecutors' comments "fell below the standard applicable to the representative of the United States," the court added.

As for Judge Hoffman, the colorful and outspoken 75-year-old jurist who has assumed semi-retired status, the court said the accused were entitled to present their side of the case free from his volunteered and sarcastic comments in the presence of the jury.

Besides discrediting the defendants in the jurors' eyes, the court said the defense was wrongly impaired when the judge refused to permit former Attorney General Ramsey Clark and others to testify as defense witnesses.

Defense attorneys William

Kunstler and Leonard Weinglass sought to prove that the intransigence of Mayor Richard J. Daley on such matters as requests for parade permits contributed to the tension in Chicago. They were entitled to offer that evidence for the jury to accept or reject, the court held. Clark was ready to testify about his efforts to intervene with Daley about handling the demonstrators.

Other grounds for reversal included:

- Judge Hoffman, who was within his rights in refusing to let defense counsel question potential jurors, failed to conduct a proper interrogation of his own. He should have granted defense requests to inquire whether the jurors would be prejudiced against the accused because of their "hippie" lifestyles.

- Judge Hoffman erred also in failing to examine the jurors for the possible impact of widespread newspaper and television publicity on their ability to be impartial.

- The judge improperly communicated with the jury through a U.S. marshal without proper notice to the defense.

The Seventh Circuit panel consisted of Judges Thomas E. Fairchild of Milwaukee and Walter J. Cummings Jr. and Wilbur F. Pell Jr. of Chicago.

Surprisingly it was Judge Pell, a 1970 appointee of President Nixon generally rated as the panel's most conservative member, who voted to strike down the interstate riot act and dismiss the criminal case outright.

The majority found that the law's prohibition against speech that incites violent conduct was sufficiently related to the danger of physical violence to pass muster under Supreme Court guidelines safeguarding First Amendment rights of free expression.

But Judge Pell, in an opinion concurring in part and dissenting in part, said, "I entertain no doubts" that the law swept too broadly against the constitutional right to dissent.