

2-27-70

**LIFE** EDITORIAL

## Justice in Chicago: an ominous farce

The five-month trial of the Chicago Seven for conspiring and "inciting a riot" at the 1968 Democratic Convention involves a law of dubious constitutionality and a 74-year-old judge whose temper, vanity and rulings will never be used as models in law schools. For both such circumstances, and for the unprecedentedly harsh contempt sentences Judge Julius Hoffman passed out, the judicial process of appeal provides remedies. The jury, by convicting none of the Seven for conspiracy and only five for incitement, showed at least a sense of discrimination in this legal quagmire. But a much harder question is whether justice is possible in a case where the defendants don't ask for it, don't believe the court can dispense it, and do their obscene and mocking best to prevent the court from trying.

There are plenty of reasons for doubting whether the Chicago Seven got a fair shake. They were picked not so much for their presumed criminality but because they were influential leaders of all major factions of the New Left, from the aging pacifist David Dellinger to the young intellectual Tom Hayden and obstreperous Yippie Abbie Hoffman.

Whether a younger, cooler, more open-minded judge could have run a more decorous trial is a nice question, since the defendants chose deliberately to maximize the chaos. But Judge Harold Medina, who for nine harrowing months tried 11 similarly defiant and provocative Communists back in 1949, saw them convicted to the tune of subsequent praise from

the higher courts and of a widespread feeling in the nation that justice had been served. No such feeling is likely to follow the Chicago Seven trial; too many observers seem ready to believe that a calculated assault on the American judicial system has succeeded and left this particular court a farcical shambles. If they think this to be a matter for congratulation rather than concern, then our judicial process is indeed in jeopardy.

For if justice can be subverted in one federal court, by shouting racist, Jew, pig or what-not at the judge, why not in others? The Chicago case proved to one law professor, Yale Kamisar of Michigan, that our "fragile legal system functions only if everyone is willing to some extent to play the game by the rules." Dr. Benjamin Spock, who is in many ways as politically radical as the Chicago Seven, made a serious and orderly defense in his trial for inciting draft-dodgers (his conviction was overruled on appeal). Even common murderers with little to lose usually show respect for the court that sentences them. The Seven—and their counsel—showed little or none; instead they rejoiced in exposing its procedural fragility.

Other pending cases are putting our court system to the same ominous test. The pretrial hearings of 13 Black Panthers in New York, for example, have been a bedlam of insults, threats and contemptuous behavior on the part of defendants and spectators alike. Judge John Murtagh in that trial is a cooler customer than Hoffman, but the Panthers seem to feel if anything more persecuted and defiant than the Seven (they also face the more serious charge of setting bombs). Is justice now to be measured by how much offensive conduct a judge can endure?

To defend the system against these assaults, some lawyers propose (and architects have been asked to design) a plastic cage like the one Eichmann was tried in, so that obstreperous defendants could hear but not be heard. Another far-out proposal is to empower the courts to impose a plea of *nolo contendere* (I do not wish to contend) on them, which is almost equivalent to guilty. These devices would scarcely improve the fair name of American justice. What else, then, can be done?

One can examine the explanations for the defiance. Abbie Hoffman, the Yippie, put one of them succinctly. The Chicago trial, he said, "is not about legal niceties. It's a battle between a dying culture and an emerging one." The New Leftists are at their savage best in cataloguing the symptoms of Western decay (nuclear arms race, Vietnam, racism, pollution, poverty, etc.). They are in some ways scruffier and more brattish but often well-schooled versions of Old Testament prophets, pronouncing doom while also inviting us to a

New Exodus, a new way of life, a revolution. They feel privileged to probe and exacerbate all evidences of the "incoherence" of Western civilization. Is this seditious and illegal violence? They hardly care, since in their view the Establishment structure, courts and all, will soon enough collapse of its own hypocritical weight.

These prophets are also very hip and modern, media-minded McLuhanites, convinced that their "image," "life-style," attitudes, slogans and shocking behavior will make more converts to the New Age than logic or reason ever can. Our courts of justice, like our universities earlier, are the ideal stage for their guerrilla theater; and they could not have asked central casting for a judge who would better serve their purposes than Hoffman. Or for a law (the "Rap Brown amendment" to the 1968 civil rights act) that raised as many misgivings among many who do not admire the aims or tactics of the New Left. Thus one way to head off their subversion is for the Department of Justice to avoid unnecessary political trials—like that of the Chicago Seven.

This is not to propose an immunity for misbehavior, inside a courtroom or out. But prophets of change have been protected by our Bill of Rights since 1789, with the expectation that free advocacy would keep America's "permanent revolution" within legal channels. These terms also place on the revolutionaries an obligation which the Chicago Seven have refused to meet.

They can justly be asked what system of justice they would put in the place of the one they are willing to subvert. Georges Sorel, the 19th Century philosopher of violence who now seems so prophetic of the New Left (and who also inspired Mussolini), has been described as "maddeningly vague" about his blueprints for the future. So, of course, was Marx; so is Herbert Marcuse; so are most of the New Left. William Kunstler, an adroitly contentious lawyer who seems to share the passions of his clients, has just been sentenced to four years in jail for contempt. Whether the sentence is eventually modified, he could put society in his debt if he would spend whatever time is required of him in describing a judicial system—perhaps a nonadversary system—which would appeal to other lawyers and men of sense as superior to our own.

For it cannot be taken for granted that chaos, or inspecific invocations of ideal justice, would be preferable to our present imperfect earthly justice. One reason why these times are so disquieting is the mindless celebration of defiance, and the eager readiness of vulnerable minorities to destroy the hard-won system of legal safeguards that protects them most of all, but the rest of us as well.



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