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THE NATION

AMERICAN NOTES

"The Future Holds Thee"

At the near edge of the '70s, Americans have a sense that they—and perhaps the rest of mankind—are approaching a future uniquely and utterly unknown, except for its dangers. Pollution succeeds nukes as the likeliest means of self-destruction. The Russians and Chinese may never attack, but what about the black and white radicals at home? And what if such rebellions should arouse a repression presided over by ideological jack-boots? There are historical patterns of such moods, recurring cycles of hope and dread. Nearly a century ago, in the midst of the American industrial revolution, Walt Whitman wrote a kind of sermon to America on its future. Except for his rambunctious optimism—a quality that would now seem at least reckless—he might have been talking to the nation today:

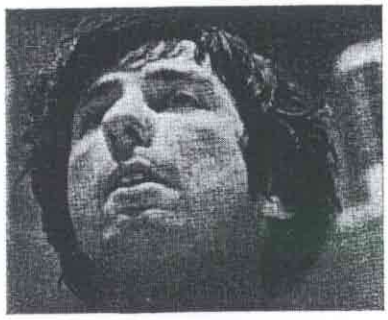
The storm shall dash thy face,
the murk of war and worse
than war shall cover Thee all over,
(Wert capable of war, its tug
and trials? be capable of
peace, its trials,
For the tug and mortal strain
of nations comes at last in
prosperous peace, not war;) . . .
But thou shalt face thy fortunes,
thy diseases and surmount them
all . . .
The Present holds Thee not—
for such vast growth as thine,
For such unparallel'd flight as
thine, such brood as thine,
The future only holds Thee
and can hold Thee.

Nowhere to Go

Nearly 2,000 New Yorkers die every week, having seen the last of big-city woes—among them bad service, infuriating transit breakdowns, crowded public facilities, garbage strikes that bury their streets in offal. Since Jan. 12, they have had to submit to one final posthumous outrage. With Local 365, Cemetery Workers and Greens Attendants, out on strike, 42 of the city's cemeteries have been closed down. In mortuary storage rooms, tool sheds, warehouses and cemetery driveways, thousands of coffins are stacked like cordwood, awaiting a settlement. If the strike goes on for another few weeks, there will even be a shortage of space for the coffins.


MARK HERTZBERG

DAVID DELLINGER



TOM HAYDEN


AP

RENNIE DAVIS


MARK HERTZBERG

JERRY RUBIN


AP

ABBIE HOFFMAN

Verdict on

AGAIN, Chicago. Again, a deeply symbolic conflict, an emotional and ideological division in the country. After the 1968 Democratic Convention, Americans were divided between those who backed the police against what seemed to them the outrageous and obscene attacks of young rioters, and those who felt that the demonstrators had been brutalized by Mayor Richard Daley's cops. This time, Americans were divided between those who saw Federal Judge Julius Hoffman as upholding the American judicial system and the sanctity of the courts against outrageous, sometimes filthy attacks by the Chicago Seven; and those who thought that, however impossible their behavior, the defendants were being victimized by a bad law and a biased judge. From all possible indications, the vast majority backed the cops then, and back Hoffman now. Without question, the Seven did indeed deliberately and dangerously assault the System—a System that, for all its faults, does protect dissenters and minorities. But the issue could not and did not end there.

As the trial closed, Vice President Spiro Agnew gave voice to what many feel when he denounced the Chicago defendants as "anarchists and social misfits" during a speech at a Republican fund-raising dinner in St. Paul. "Fortunately for America," said Agnew, "the system proved equal to the challenge. That jury came in with an American result." New York's Mayor John Lindsay was of a different mind. "All of us, I think, see in that trial a tawdry parody of our judicial system," he said. "When a trial becomes fundamentally an examination of political acts and beliefs, then guilt or innocence becomes almost irrelevant." Protests, many of them violent, broke out against the Chicago convictions in cities and on campuses around the land. The trial was not only

PROTESTERS MARCHING

the Chicago Seven: From Court to Country

a symptom of the division in America; it also deepened it.

The five months of testimony and argument had barely come to an end, with the jury dispatched to ponder its verdict, when Judge Hoffman began handing out contempt-of-court sentences that ranged from two months and 18 days for Lee Weiner to 29 months and 16 days for David Dellinger. With characteristic, outrageous hyperbole, Dellinger protested: the System "wants us to be like good Jews and just go quietly to the gas chambers." At that point, his daughter Natasha, who had been with her sister Michelle at the trial, clapped her hands twice, and a kicking, punching melee ensued between two U.S. marshals and the defendants, their friends and relatives.

Incredible Statement. Chief Defense Attorney William Kunstler, reduced to tears of resentment and frustration, pleaded with the judge: "Take me next. Let me be next." Kunstler got four years and 13 days for contempt; his associate, Leonard Weinglass, was sentenced to 20 months and five days. Hoffman told them: "Crime, if it is on the rise, is due in large part to the fact that waiting in the wings are lawyers who are willing to go beyond professional responsibility, professional rights, professional duties, in their defense of a criminal." That statement, like others from Hoffman, seemed incredible; American judicial tradition dictates that, no matter what the crime, a defendant is entitled to full, vigorous representation.

In the Federal Building jury room and then in the Palmer House hotel, the jury of ten women and two men argued and horse-traded for four days before reaching a verdict on the charges against the Chicago Seven—which were that they had conspired to incite a riot during the 1968 convention, and that they had individually crossed state lines with intent to foment a riot. In the long days of the trial, the jurors—ordinary Americans perplexed by the impassioned pleas and portentous issues set before them—had almost become forgotten people. At first a majority of eight, including the two men, favored convicting all of the defendants of both conspiracy and the individual charges; three women insisted on complete acquittal, one vacillated between the two camps. Agreement was finally reached late at night, with each faction holed up in a separate hotel room, through the mediating efforts of one of the majority—the youngest juror, Kay Richards, 23, a computer operator.

"Feelings were so high, with the two groups against each other, we just didn't feel at ease in there in the jury room together," Miss Richards said later. By her account, "three women thought the law the defendants were indicted under was unconstitutional." That is a question for an appeals court, she explained to them, not for the jury. "So we agreed we should not be a hung jury. We decided to compromise, and it was just a question of how to compromise." Said another juror, Mrs. Ruth Petersen, 44, who favored conviction on both counts for all and admitted that there was not one of the defendants she really liked: "Half a chicken is better than none at all. We were all anxious to go home." Jurors are often moved by just such sentiments, but they rarely confess it so bluntly.

Finally, the jury reached a verdict. For all seven defendants, on the conspiracy counts of the indictment: not guilty. For five of them—Dellinger, Rennie Davis, Tom Hayden, Abbie Hoffman and Jerry Rubin—on the count that they had crossed state lines and acted individually to encourage a riot: guilty as charged. The other two defendants, John Froines and Lee Weiner, were acquitted on the second count as well.

Jail Terms. Before sentencing the five convicted men Judge Hoffman sat back in his deep chair and let them make statements free from interruption. Dellinger: "Like George III, you are trying to hold back the tide of history, you are trying to hold back a second American revolution." Abbie Hoffman: "I'm an outlaw. I always knew free speech wasn't allowed in present-day America." Hayden: "They were bound to put us away." Rubin: "This is the happiest moment of my life." Davis: "My jury will be in the streets tomorrow all over the country." Defense Attorney Kunstler protested that Judge Hoffman was "wrong legally and morally" to sentence the defendants only two days after the verdict. "To say I am morally wrong," Hoffman replied, "can only add to your present troubles."

Hoffman then sentenced each of the five convicted under the antiriot law to maximum jail terms of five years and imposed on each a $5,000 fine, half the allowable maximum. The jail terms are to run concurrently with the contempt sentences, so that none will have to serve more than five years in all—even if appeals fail and no paroles are granted. But Hoffman added an unusual zinger. The five will have to pay portions of the costs of their own prosecution.* The total costs could run as high as $50,000. They will stay in jail, said the judge, until both the fines and the costs are paid. He also refused to let the five out on bond pending appeal, calling them "dangerous men." The lawyers, however, were allowed their freedom to begin the appeal.

Endless Provocations. The trial thus ended with the same total hostility and mutual incomprehension that stained it from the start, and it left basic legal questions unresolved (*see box, page 10*). Both sides confirmed each other's prejudices. If the defendants and their lawyers seemed determined to provoke Judge Hoffman and convert the courtroom into an arena for political confrontation, the prosecution and the bench often came across as heavy-handed, harsh enforcers of questionable statutes.

The defendants' provocations were ingenious and seemingly endless. They delivered songs and poems from the witness stand; two of the accused showed up wearing what looked like judges' robes. They irked Hoffman by calling him "Julie." Often their words and actions were vicious. While Assistant Prosecutor Richard Schultz was examining one witness, he claims, "Rennie Davis moved over and kept whispering things like 'You dirty fascist Jew!' "

For his part, Judge Hoffman issued

* Although the practice is uncommon in federal district courts, judges may assess certain costs of prosecution against convicted criminal defendants, except in a capital case.

IN MANHATTAN

MICHAEL ABRAMSON

AP

KUNSTLER & MICHELLE DELLINGER

STONING STORE WINDOWS IN BERKELEY

JUDGE JULIUS HOFFMAN

DEFENDANTS' WIVES BURNING ROBES

a series of astonishing rulings. He jailed two lawyers for failing to appear in court, even though they had only helped to prepare the defense. He barred such potentially important defense witnesses as former Attorney General Ramsey Clark and Civil Rights Leader Ralph Abernathy. Before the jury, he praised Chief Prosecutor Thomas Aquinas Foran and put down Defense Attorney Weinglass by consistently mispronouncing his name.

Observed Weinglass: "Where you had a prosecutor who was honestly and sincerely convinced that these men were evil and were out to overthrow the Government, and you had the Seven also honestly and sincerely convinced that the Government which was prosecuting them is fascistic—given those factors, you could not have an orderly proceeding." Attorney Kunstler argued: "It's against the law to kill—yet people kill all the time to protect their families and the law allows it. What's to happen in a courtroom when the judge commits an injustice?" The regular appellate process, as he sees it, is no longer adequate to judge the judges. He explained: "I never was this way before. I re-evaluated the role of the lawyer in a political case, and concluded that he has to develop a certain aggressiveness even though it may run counter to the rules the system has devised."

Draconian Rulings. Few lawyers would agree with his conclusion. But even Administration officials who favored the prosecution privately confess to dismay at Judge Hoffman's performance as trial judge. They feel that he was too old and too insensitive for the task, and that his Draconian rulings and severe contempt sentences obscured the charges against the defendants. However, Deputy Attorney General Richard Kleindienst put a cheerful face on the outcome. "We think it's a good result," he said. "We felt the evidence justified conviction on the conspiracy charge, but that's what juries are for." Kleindienst added that the Government will not hesitate to invoke the conspiracy statute again "when we come up with a set of facts" that justifies it.

The rebels, though decrying their treatment, exulted in their martyrdom. Rennie Davis offered a challenge to Prosecuting Attorney Thomas Foran. Said Davis: "When I get out I'm going to move right next door to Mr. Foran and I'm going to turn his kids into Viet Cong." Abbie Hoffman's wife Anita proclaimed: "If there wasn't a conspiracy before, there sure as hell is one now." As a practical matter, however, the radical movement has lost—at least for the time being—some of its shrewdest and most daring leaders. Thus the violent antiwar left, like the Black Pan-

The Legal

AT the root of the problems raised by the Chicago trial is the old puzzle of how far a free society should go in regulating inflammatory expression. The First Amendment guarantees free speech, but a government's equal duty is to preserve domestic peace, and as Justice Holmes noted, "Every idea is an incitement." The U.S. is no exception to the rule that in times of violent dissent, political speeches can become fighting words, and rights get bent in the process. Before the Bill of Rights was seven years old, the Federalist Administration of John Adams invoked the Alien and Sedition Acts to prosecute no one more seditious than newspaper editors who supported the opposing Democratic-Republican Party. The World War I Espionage and Sedition Acts were used to arrest 2,000 antiwar dissenters who dared to utter or write "disloyal" statements about the flag or the Government.

Inviting Dispute. The Supreme Court upheld the Espionage Act, but also voiced a memorable concept: Justices Holmes and Louis Brandeis argued that even the most revolutionary rhetoric is protected unless it poses a "clear and present danger" of inciting insurrection. Though never accepted as official doctrine, that idea eventually helped expand the boundaries of protected protest. Speaking for the court in 1963, Justice Potter Stewart approvingly quoted a lower court's reminder that "a function of free speech under our system of government is to invite dispute. It may, indeed, best serve its function when it induces a condition of unrest, or even stirs people to anger."

By that standard, the Chicago case started when Mayor Richard Daley barred permits for antiwar demonstrations near the Democratic Convention. "Prior restraint" is usually illegal without solid proof that irreparable harm will ensue; yet many law-enforcement officials, including then Attorney General Ramsey Clark, thought violence was avoidable. Undoubtedly some extremists were bent on provoking trouble, and they were aided when Daley's refusal to negotiate

Issues: Justice and Politics

angered thousands of young people. The police were severely harassed, but they in turn treated demonstrators so harshly that the Walker Commission called the subsequent disorders a "police riot." Nixon's new Attorney General John Mitchell made the decision to prosecute a symbolic cross-section of demonstration leaders, thereby moving the issues into the courts.

Seeking a Soapbox. Further problems were almost inevitable, since most legal scholars have serious constitutional doubts about the 1968 federal anti-riot law that Mitchell used. The law bans interstate travel or communication with intent to "incite or encourage" a riot, and it sweepingly defines a riot as any demonstration involving as few as three people and one act of violence endangering property or other people. According to some scholars, anyone who crosses a state line intending to join a demonstration that becomes violent now runs the risk of Government prosecution, even though others incite the ruckus. As critics see it, the law might deter even orderly expressions of grievances—and is unnecessary, since every state already has numerous laws for punishing incitement or disorderly conduct.

If the law is dubious, how should those prosecuted under it behave in the courtroom? The American judicial system has a time-honored answer: face trial with dignity and decorum, appeal a conviction and trust a higher court to void the law if need be. When Dr. Benjamin Spock was tried for inciting draft dodgers, for example, he made a sincere and orderly defense; his conviction was reversed on appeal. By choosing, instead, to disrupt their trial through guerrilla tactics, the Chicago defendants and their lawyers not only forfeited the sympathy of the majority of the public, but also lost the moral authority they might have brought into the courtroom. They reasoned that they had been made victims of a "political trial." Indeed, the chief evidence that U.S. Attorney Thomas Aquinas Foran used to prove their intent was their beliefs—what they wrote and said that supposedly inflamed thousands of people to join the melee. The Seven wanted to elaborate on those beliefs and make the court a soapbox —all deemed irrelevant to the trial of their specific conduct.

If the defendants lost the moral authority of their cause, so did Judge Hoffman by betraying what many legal observers consider clear prejudice for the prosecution. Could Hoffman have handled himself and the case differently? Nothing quite like it has ever happened in a U.S. courtroom before. In the 1949 trial of eleven Communists for conspiring to advocate violent overthrow of the Government, Defendant Eugene Dennis insisted on representing himself. Though he and lawyers for the others hurled charges of unfairness at U.S. District Judge Harold Medina, they stopped well short of the bitter insults employed by the Chicago group. In 1966, one of three savagely hostile convicts charged with escaping from a Pennsylvania penitentiary told Pittsburgh Judge Albert A. Fiok: "If I can't get my rights legally, I'll have to blow your head off. You understand that, punk?" Fiok understood enough to clap the three into gags and straitjackets.

"Divine Right." Still, a judge's chief weapons are patience and scrupulous fairness toward unfamiliar ways of living. When twelve of the "Milwaukee 14" were tried last June for burglary, arson and theft during a raid on a draft board, County Judge Charles L. Larson, 62, quietly lectured the aggressive defendants on his reasons for overruling many defense tactics and overlooked minor outbursts. After their convictions, he also sentenced five of them to ten days or $50 for contempt. Their behavior did not reach Chicago proportions, but they went to jail martyrs to the draft, not the judicial system.

By contrast, Hoffman upset lawyers by his punitive use of summary contempt, the instant enforcer that empowers a judge to maintain order by acting as prosecutor, chief witness, judge, jury and sentencer. The power goes back to the days when judges were representatives of the King and had the authority to enforce respect for the monarch's "divine right." Decorum can work in a defendant's favor by preventing unruly behavior that might prejudice the jury against him. Yet Hoffman, in meting out more than 17 years' worth of contempt sentences, apparently tried to get around a Supreme Court decision that requires a jury trial whenever a man faces a sentence exceeding six months. Thus he gave Defense Attorney William Kunstler four years, 13 days —in small, consecutive doses. Example: for one offense (not sitting down when ordered to), Kunstler drew varied sentences of 7, 14, 21 and 30 days.

Old Lesson. Obviously Hoffman had good reason to cite Kunstler and Weinglass, to say nothing of their clients. But the size of the lawyers' sentences left many legal experts aghast—and concerned about the possible effect on some lawyers who may now be less willing to represent controversial clients vigorously. Said San Francisco Attorney Naomi Litvin Helm: "The judge had to do something. But four years for acting up in a courtroom is a hell of a long time when you consider what some people get for an actual crime of violence."

Appeals may well soften those sentences and probe potentially reversible errors by Hoffman. But the outcome may be confusing. Although the Chicago Seven were acquitted of conspiracy —thanks to the jury that most of them disdained—the courtroom warfare may make it unnecessary for an appeals court to rule on the constitutionality of the anti-riot law on First Amendment grounds. Whatever the result, the Chicago trial underscores an old lesson: courts are poor places for resolving ideological conflicts. In a strong democracy, such cases should not be inevitable in times of social stress. When they do occur, the judicial process that stands between reason and brute force must be respected by the judged as well as the judge. It was not respected in Chicago, and the U.S. is poorer for that fact.

thers, will doubtless suffer from a vacuum at the top.

But there are still many sympathizers at the bottom. In Manhattan, some 1,500 youths demonstrated; some set upon police with snowballs, rocks, bottles, and chunks of metal. Some 25,000 turned out to protest in Boston; about twelve were beaten to the ground by police. Bank windows in Ann Arbor were broken during a march of 2,000 protesters.

Rioters smashed the windows of more than 95 businesses in Berkeley and eight buildings in Palo Alto, including Stanford's Hoover Library. Seattle found itself in the middle of its worst outbreak of violence in decades: some in a crowd of 2,000 demonstrators broke bank windows and lobbed blue paint bombs, rocks and tear-gas grenades at the entrance to the federal courthouse before 290 nightstick-swinging police dispersed them. In Washington, D.C., a group of 500—chanting, "Two, four, six, eight, liberate the Watergate"—marched on the luxury Potomac-side apartment complex that houses a number of high Nixon Administration officials, including Attorney General John Mitchell.

What makes the case of the Chicago Seven special is the breakdown of discipline in a court of law, a problem unparalleled even in celebrated trials of this century that carried strong political overtones—Sacco and Vanzetti, Alger Hiss, the eleven Communist leaders in the 1949 Dennis case. Undoubtedly a greater share of the blame for the breakdown rests on the defendants than on the judge. Still, Boston Attorney Herbert Ehrmann, who defended Nicola Sacco and Bartolomeo Vanzetti in the 1920s, says of the Chicago trials: "The conduct of the judge and the actions of the defendants were all disgraceful. The whole episode was a disgrace to American justice." The American judicial system as a whole is far sounder than the trial suggested. But few events have put that system to such a brutal test as the case of the Chicago Seven.