The Chicago Trial: A Loss for All

AFTER five months of insult to the judicial process, the trial of the Chicago Seven ended. A glassy-eyed jury of ten women and two men retired to ponder whether the defendants were guilty of "conspiracy to incite" the riots that bloodied Chicago streets during the 1968 Democratic Convention. Appeals may go on for years. However, the grotesque trial went far beyond the question of whether seven assorted radicals actually started the melees. The real issue was the integrity of U.S. law in times of traumatic dissent. The defendants' outrageous antics in court obscured that issue.

The decision to prosecute was dubious from the start. The Seven were the first to be charged under the 1968 federal anti-riot law. Based on the "outside agitator" explanation for ghetto riots, the statute made it a federal crime (punishable by a $10,000 fine, five years' imprisonment, or both) to cross state lines with intent to incite, organize or participate in a riot. The law defined a riot as any public disturbance involving as few as three people and one act of violence endangering any other person or property.

"Police Riot." When the law was first proposed, the then Attorney General Ramsey Clark testified against it, underscoring the view of many legal scholars that its blunderbuss language was constitutionally questionable and might pose a threat to legitimate political activity. One major concern: a jury might infer that the organizers of a peaceful demonstration had riotous intentions even if hecklers or militants started a ruckus. After the convention, Clark refused to invoke the new law despite Chicago Mayor Richard Daley's contention that itinerant "terrorists" had caused the tumult.

Clark was impressed with the findings of an investigation headed by Lawyer Daniel Walker, then the Mafia-fighting president of Chicago's crime commission. The Walker Report agreed that some demonstrators had provoked the Chicago police. However, its conclusion was that "the vast majority of the demonstrators were intent on expressing their dissent by peaceful means," and that the eruption had in effect been a "police riot." Clark ordered a federal grand jury in Chicago to begin investigating possible federal law violations by overreacting policemen.

AP

JUDGE JULIUS HOFFMAN
Battle between two cultures.

Sample Insurgents. "If the new Administration prosecutes the demonstrators," Clark said, "it will be a clear sign of a hard-line crackdown" on dissent. Shortly thereafter, Richard Nixon's new Attorney General, John Mitchell, authorized the U.S. Attorney in Chicago, Thomas Foran, to add demonstration leaders to the grand jury's agenda. In March, the grand jury indicted a balanced ticket: eight policemen, eight radical ralliers.

Seven officers were charged under an 1866 law (maximum penalty: one year in prison, $1,000 fine) that forbids public officials to inflict summary punishment. The eighth was accused of perjury for denying that he had struck anyone. All eight policemen have since been tried and acquitted. The eight radicals, charged with violating as well as conspiring to violate the far stiffer anti-riot law, represented virtually every brand of insurgency that challenged U.S. politics in the 1960s. Tom Hayden and Rennie Davis were among the founders of Students for a Democratic Society. Abbie Hoffman and Jerry Rubin typified the anarchistic yippies (Youth International Party). David Dellinger was a prominent pacifist; John Froines and Lee Weiner were antiwar academics. Bobby Seale was national chairman of the Black Panthers.

Planned Violence. The trial took place under the eye of a 74-year-old judge with a penchant for becoming personally involved in the matters before him. U.S. District Judge Julius Hoffman, no kin to Abbie, refused to delay the trial for seven weeks so that Black Panther Seale could be represented by his regular lawyer, Charles Garry, then about to be hospitalized. When Seale repeatedly shouted for the right to defend himself, Hoffman had him bound and gagged, and eventually handed him a four-year sentence for contempt. The judge severed Seale's case, thus reducing the Chicago Eight to the Seven. Time and again, Hoffman ruled out evidence that Defense Attorneys William Kunstler and Leonard Weinglass tried to present, including the testimony of Ramsey Clark. The wranglings forced Hoffman to send the jury from the courtroom so often that it did not hear roughly a third of what went on.

Under the blurry federal conspiracy doctrine, Foran had to show only that before the defendants got to Chicago they had knowingly agreed to incite riots, and that after they got there one of them had done something about it. The star prosecution witnesses were four undercover agents, who said that the Seven had planned violence before the convention, and that several threw rocks at police cars, purchased materials for fire and stink bombs, and made inflammatory speeches urging the crowds to march without permits and "kill the pigs."

To dramatize their defiance, the defendants played guerrilla theater. When Judge Hoffman refused to let them bring a birthday cake into the courtroom for Bobby Seale, Rennie Davis yipped: "Hey, Bobby, they've arrested your cake." Yippie Hoffman, brutally playing on the judge's sensitivities as a fellow Jew, cried: "You are synonymous with Adolf Hitler." Dellinger peered at a testifying prosecution witness and said "Bull----"—provoking a scuffle in which two spectators were arrested. No matter how dubious the law under which they were tried, no matter how antagonistic the judge, the defendants were striking at the U.S. legal system, which

RUBIN HAYDEN WEINER FROINES HOFFMAN DELLINGER DAVIS

Insult to the judicial process.

can work only under at least a minimal observance of civilized rules. "People keep saying it's too bad that we don't behave so there can be a clear decision on the legal issues," declared Abbie Hoffman. "But this trial is not about legal niceties. It's a battle between a dying culture and an emerging one."

New Disrespect. Kunstler promised appeals to test his belief, shared by some legal experts, that Judge Hoffman's procedural strictures made a fair trial impossible. Other legal scholars felt that Hoffman's errors were less legal than strategic. Granted, the provocations were horrendous; but by falling for the defendants' obnoxious baiting, they said, the judge had compounded the impression of unfairness given by the original decision to prosecute. Even so, if the defendants have indeed provoked Hoffman into reversible errors, an appeals court might consider no further issues, thus, ironically, sustaining the anti-riot law's probable "chilling effect" on all demonstrations. The defendants' antics have outraged many Americans who now deplore dissension more than ever. At the same time, the trial has tragically convinced many young people that the U.S. judicial system is a tool for "repressing" dissent. Hostility toward the courts has already reached New York and Washington, where Black Panthers and antiwar clergymen have tried to turn their trials—for more palpable offenses than those committed by the Chicago defendants—into similar arenas.

After more than 20,000 pages of testimony by 77 witnesses for the prosecution and 113 for the defense, Judge Hoffman instructed the weary jurors: "If you find that a conspiracy existed and that during it one of the alleged overt acts was committed by a member of that conspiracy, that is sufficient to find all members of the conspiracy guilty. When persons enter the unlawful agreement, they become agents for one another." He added: "You must not be influenced by any antagonism you may feel for the defendants' hair style . . . or life-style."

Virtually before the door had closed behind the jury, Hoffman started making his own feelings clear by charging the defendants—and their lawyers —with "reprehensible" contempt of court. He apparently hoped to evade a recent Supreme Court decision that requires jury trials for contempt charges involving long sentences. Consequently, Hoffman handed out a series of small sentences to run consecutively. Turning to Dellinger, the judge cited the pacifist for 32 separate offenses, sentenced him to a total of 29 months and 16 days in jail, and denied bail during his appeal. Amid angry cries from Dellinger's lawyers and tearful daughters, Hoffman ordered: "Mr. Marshal, take this man into custody." He then followed suit with all the others. By that time the jury's verdict, whatever it might be, hardly seemed to matter.

ENVIRONMENT

Nixon Starts the Cleanup

In a special message to Congress last week, President Nixon began to battle in earnest for protection of the U.S. environment. His previous talk about the problem had sounded somewhat hollow. Even his new Council on Environmental Quality had appeared toothless; his recent ban on pollution by federal facilities seemed unenforceable. By sharp contrast, the President's message last week contained 14 executive orders and 23 requests for legislative acts. Tough, direct and specific, it surprised all White House watchers.

It was also a political master stroke that cut through dozens of Democrat-sponsored environmental bills already proposed or on the books. In effect, the President said that no one is yet certain how to cure all pollution, but that his Administration will now seek the best available answers. Wherever conflicting interests arise—for example, between agricultural pollution and productivity—Nixon called for thorough study by the Council on Environmental Quality. His Democratic critics felt co-opted, to say the least. As one Senate staff expert put it: "We recognize a lot of the proposals as our own. But there's no use whining; we ought to support the program."

$10,000 a Day. Nixon's message, under preparation for six months, was clearly knowledgeable. Instead of attacking water pollution in individual localities, for example, the President considered whole river-basin systems. He pledged $4 billion in federal funds over the next five years to help municipalities build 1,500 new sewage-treatment plants and improve 2,500 existing facilities. The towns and cities will have to raise another $6 billion in matching funds, but they can expect assistance from a new Environmental Financing Authority. If Congress approves, this agency will issue its own federal bonds to buy the local bonds that cities with poor credit cannot sell on the open market.*

Despite his usual advocacy of strong state and local government, Nixon asked Congress to set nationwide federal standards for air and water purity. Reason: Pollution is "no respecter of political boundaries." He also proposed faster federal legal procedures to penalize industrial and municipal polluters, set fines for persistent offenders at a maximum $10,000 a day, and called for new power to obtain court injunctions forcing polluters to stop operations completely.

No More Lead. While Detroit winced, Nixon focused on the automobile, which causes at least half of U.S. air pollution. He directed the Department of Health, Education and Welfare to establish new standards to control auto emissions in 1973 and 1975 models. One proposal for meeting these standards: remove lead additives from gasoline. As a result, automakers will have to reduce engine horsepower, and gasoline will cost more (*see* BUSINESS). But the rules will reduce the toxic substances that autos now spew into the U.S. air each year—notably 350 million pounds of lead, 12 million tons of hydrocarbons and 66 milion tons of carbon monoxide.

"Few of America's eyesores are so unsightly as its millions of junk automobiles," continued the President. He noted that it is now cheaper to abandon old cars in city streets and fields than to take them to wreckers. A possible solution, Nixon said, would be to include the cost of disposing of a car in its purchase price —which would entail yet another increase in the cost of a car.

Turning to problems of land conserva-

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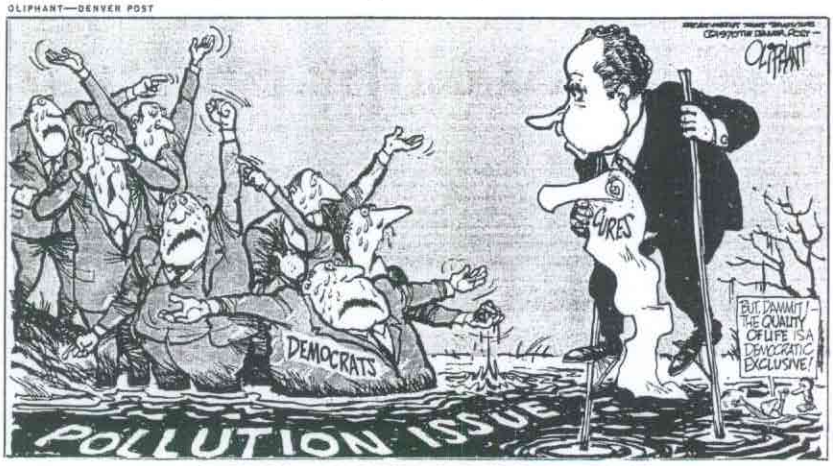

"WELL, IT MAY HAVE BEEN YOURS TO START WITH, BUT WHAT DID YOU EVER DO ABOUT IT?"

* One flaw: the federal agency probably could not override state, regional or local bonding statutes. In consequence, any municipality that reached the legal limit of its bonding capacity might still be unable to build even desperately needed treatment plants.