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5 in Chicago Convicted on 1 Riot Count

By William Chapman
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CHICAGO, Feb. 18—Five of the "Chicago 7" defendants were found guilty today of crossing state lines to incite a riot at the Democratic National Convention in 1968.

One of the most emotion-packed trials of modern times ended with two defendants being acquitted completely

and all seven found innocent of conspiring to organize the riots.

John Froines burst into tears as his acquittal was read. Defendant Abbie Hoffman's wife shouted insults at the judge. One juror appeared on the verge of weeping.

Under the split verdict, the five found guilty are subject to maximum sentences of five years in prison and a fine of \$10,000. The maximums would have been doubled had they been convicted of the conspiracy charge.

After deliberating for more than four days, the jury of ten women and two men entered the heavily guarded courtroom shortly after noon and handed over this verdict:

• David T. Dellinger, Rennie Davis, Abbie Hoffman, Jerry C. Rubin and Thomas Hayden are guilty of violating a 1968 law prohibiting the use of interstate commerce with the in-



Associated Press

Michelle Dellinger, daughter of one of the five Chicago defendants who were found guilty, sobs as defense attorney William Kunstler talks to newsmen.

tent of inciting or organizing a riot. This was the first conviction under that statute.

* Froines and Lee Weiner were found not guilty of teaching the use of an incendiary device.

* All seven were acquitted of a separate count charging that they conspired to organize the rioting that erupted when Democrats met here to choose a presidential candidate in 1968.

In the final moments there were again some of the emotional outbursts that had characterized the trial for more than 4½ months.

Froines, who along with the others had said he wanted to be convicted or released with the rest and that a split verdict was the least desirable outcome, sobbed for several minutes, clutching the hand of Davis at the defense table.

At the government's request, Judge Julius J. Hoffman had ordered the courtroom cleared of spectators and members of the defendants' families before the verdicts were read.

As Abbie Hoffman's wife was led out, she screamed that the defendants and their lawyers "will be avenged."

See VERDICT, A2, Col. 1

VERDICT, From A1

"We'll dance on your grave, Julie," she shouted at the judge. "You are the emperor of the pig empire."

She, Rubin's wife, and several other spectators were ordered to leave the room.

Defense lawyer William M. Kunstler had argued against excluding family members, calling it "the crowning indignity of this totally unfair trial. At this time no man should be alone."

But the assistant prosecutor, Richard G. Schultz, claimed they should be excluded on grounds they had caused courtroom disturbances in the past.

Schultz also was concerned that someone would shout to the jury the fact that the defendants had been in jail since the weekend when Judge Hoffman had cited them for contempt of court. The jury had never known that.

All seven defendants were

returned to custody after the verdict. They have been denied bond on the contempt sentences and must serve that time unless an appeals court grants them bail or overturns the sentences.

As Davis left the courtroom, he told a reporter, "Our jury will be in the streets tonight." He was referring to demonstrations that have taken place in several cities since the contempt sentences were imposed.

Hoffman refused to grant bail pending appeal of today's convictions.

"I've heard the evidence here and I've watched all of them in this courtroom," he said. "I find that they are dangerous men to be at large."

The defendants and their lawyers never knew until they appeared in court this morning that a verdict had been reached although they had been promised at least one hour's advance notice.

They and the press thought the session was being held for argument on a defense motion to discharge the jury on grounds it must be deadlocked.

The defendants joked and greeted friends with smiles until they were warned that a verdict was expected. Then they became subdued.

Their hopes for a total acquittal or a hung jury had risen during the long deliberations and they had not expected a verdict as they were driven from the Cook County Jail to the federal lower courts building.

The rumors were confirmed only when Judge Hoffman entered the courtroom, took his seat, and said, "Mr. Marshal, I understand there is a verdict."

There were 15 Federal marshals in the courtroom. The building was surrounded by Chicago police anticipating trouble from demonstrators who had staged small but raucous protests all week. As the yellow school bus carrying the jurors departed from the building, a crowd of about 1,000 threw pennies and shouted: "You pigs."

U.S. Attorney Thomas Foran, in his first public comment on the trial, said he was satisfied with the verdict despite losing conviction on the conspiracy count.

"I believe in the jury system, and prosecution is always satisfied with the verdict a jury gives," he said.

But assistant U.S. Attorney Schultz, in contrast to his

chief's coolness, registered strong complaints against the courtroom tactics of both the lawyers and the defendants.

"They were trying to do to the judicial system what we had charged them with doing in Chicago in 1968," Schultz said. He called the lawyers' behavior and the defendants' interruptions "attempts to sabotage the trial."

Judge Hoffman did not enter the formal judgment of conviction today because one matter remains to be disposed of — government wiretapping.

He had set that issue aside until after the verdict.

During the trial, the prosecution produced in sealed envelopes several logs of the defendants' conversations that had been intercepted either by wiretaps or eavesdropping devices. Earlier, in pretrial hearings in July, the government had acknowledged illegal surveillances of Dellinger, Rubin and Davis.

If it can be shown that any illegal electronic surveillance led to evidence introduced against the defendants the verdict would have to be set aside.

The defense contends that under Supreme Court decisions any illegal wiretaps must be opened up for courtroom argument. The defense would then try to show that some evidence in the trial stemmed from the illegal wiretaps.

However, Judge Hoffman indicated today that they may be no open hearing. He said he would deal "appropriately" with the eavesdropping logs on Friday morning.

The jury's split verdict, exonerating Froines and Weiner, apparently was based on the slim evidence the government produced against them. They were relatively minor figures at the convention demonstrations while the five found guilty today had been prominent leaders either of the Yippie Youth International Party movement or of main steering committee that stage protests.

The substantive charge against Froines and Weiner alleged they intended to violate a section of the 1968 anti-riot act which prohibits the teaching or demonstration of

incendiary devices.

Specifically, they were accused of planning to firebomb the Grant Park underground garrage. The major piece of evidence against them was an alleged overheard conversation about the ingredients of a molotov cocktail.

The substantive charges on which the other five were indicted were based primarily on public speeches they had made.

For example, Dellinger was accused of traveling to Chicago intending to incite or organize a riot. The specific act of which he was accused was a speech in the Grant Park band shell shortly before a major confrontation with police in front of the Hilton Hotel.

The jury threw out completely the first count in the indictment alleging all seven had conspired together. Judge Hoffman had instructed the jurors that the government did not have to prove a "formal agreement" existed. It only had to prove the defendants had a "tacit understanding," Hoffman said.

The trial began on Sept. 24 with the selection of a jury of 10 women and two men who for nearly five months were sequestered. They were lodged at the Palmer House Hotel and prohibited from reading newspapers or watching television. Judge Hoffman ordered them locked up after two of them were sent letters stating, "You are being watched." The letters were signed, "the Black Panthers."

One of the two, who said she couldn't remain impartial after the incident, was removed from the panel. She was replaced with an alternate.

At the time, the defendants were the "Chicago Eight," one of them being Bobby G. Seale, a California leader of the Panthers who was included in the indictment because of two speeches he made during the convention.

Seale's episode was the most physically dramatic of the trial. He repeatedly rose from the defense table demanding that he be permitted to defend himself because his preferred attorney, Charles R. Garry, was unable, due to illness, to attend the trial. In the course of his interruptions, he bitterly attacked Judge Hoffman, calling him at one point a "fascist pig."

After repeated warnings, Hoffman had him bound and

gagged in the courtroom for four days. When Seale persisted in muttering epithets and objections through his gag, the judge severed his case from the other seven and sentenced him to an unprecedented four years in prison for contempt of court. He is scheduled to be tried separately in April.

With Seale gone, the tumult abated only partially. Angered by the judge's rulings on admissibility of evidence, the defendants moaned, muttered objections and occasionally shouted that the trial was rigged. Each time, the judge noted their behavior meticulously, apparently for future contempt citations.

There were moments of comic theater, as when the defendants spread out a Vietcong flag on their table and then engaged in a tug of war over it with court marshals.

"You will go down in infamy for your open and obvious lies in this courtroom," David Dellinger shouted to the judge at one point. Later, Dellinger was ordered to jail with his bail revoked for another spontaneous outburst in which he muttered "bullshit."

One of Judge Hoffman's more controversial rulings

was his refusal to let former Attorney General Ramsey Clark take the witness stand as a defense witness. The prosecution argued that "nothing he could say would possibly be admissible." Defense lawyer Kunstler called the ruling "absolutely unheard of in the history of the United States."

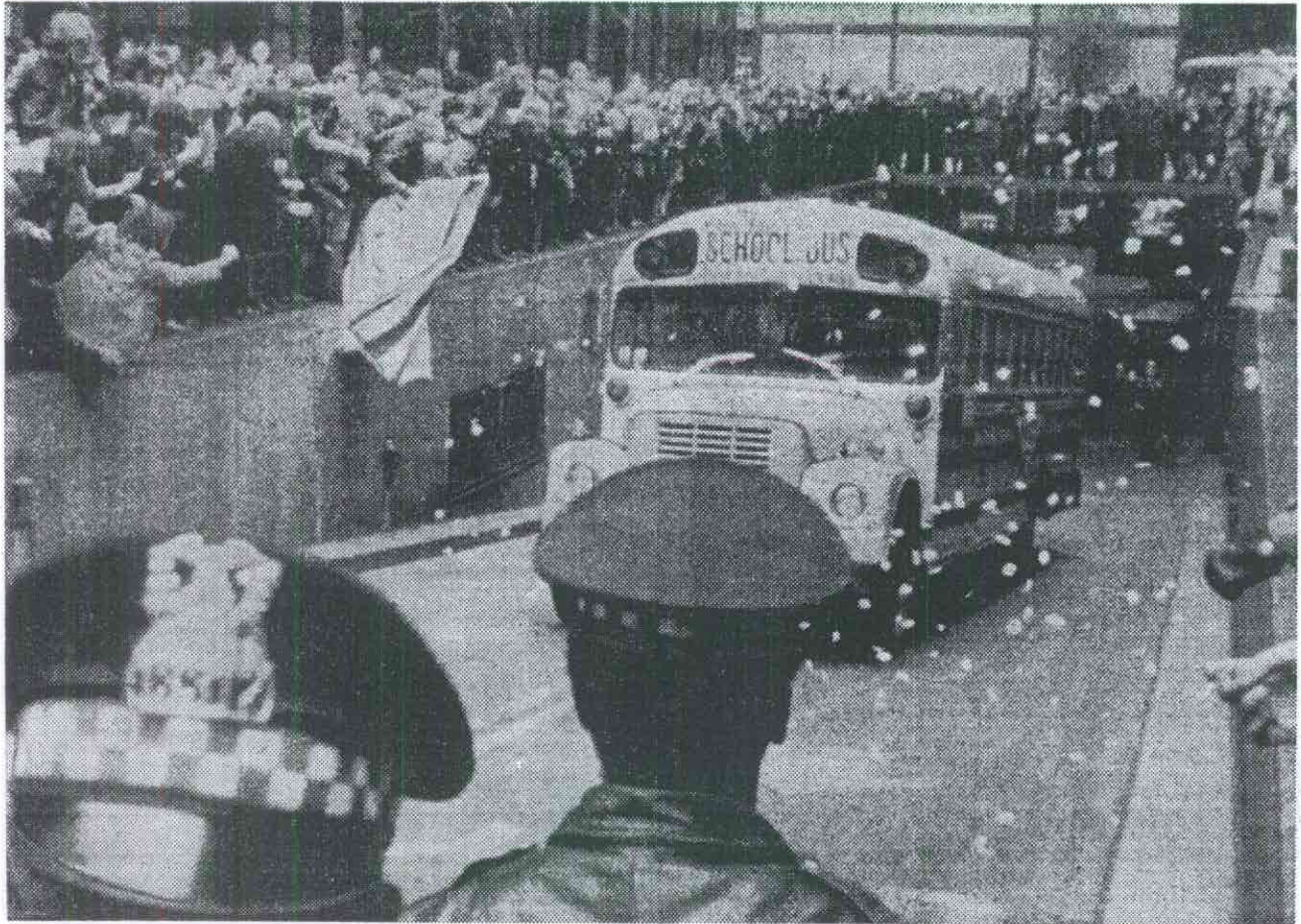
A parade of unconventional witnesses testified for the defense—among them folk singers Judy Collins and Phil Ochs, poet Allen Ginsberg, and rock band artist "Country Joe" McDonald.

Government witnesses consisted primarily of undercover agents, paid informants, and city officials.

The legal issue boiled down to this: What were the intentions of the seven men in coming to stage demonstrations and a Yippie "Festival of Life" at the Democratic convention?

The government insisted they came to promote violent confrontations that would "humiliate" the government, evoke strong police action, and convince the world that the United States had become a police state. The assistant prosecutor, Richard G. Schultz, ultimately charged their actions were the first stage in a planned "revol-

Five of 'Chicago 7' Guilty on 1 Count, Two Are Acquitted



Associated Press

Crowd throws debris at a bus carrying the "Chicago 7" jurors back to their hotel from the Federal Building.

tion" intended to create a Vietcong-styled movement in this country.

Agents testified that defendant Jerry Rubin urged a crowd to "get the pigs," that two others plotted to fire-bomb an underground garage, that a street march was planned only as a diversionary action to permit radical protesters to wreak havoc in the Loop.

The defendants' intentions were also demonstrated, the government argued, by drill sessions in which students trained in karate and judo to combat police.

The defense replied that many of these stories were fabricated by police agents, that any violent behavior was only in reaction to police attacks.

But the main question involving the defendants' intentions resolved around the city's denial of parade and park permits sought for months before the convention.

The seven had come to Chicago, they insisted, to stage

peaceful protests and a rock music festival. They recounted a long history of attempting to obtain permits for parades and park use. With these, they argued, they could have chan-

nelled the pent-up anger of antiwar protesters into safe and legitimate dissent.

But, they testified, the city

officials stalled and ultimately refused an assembly permit near the convention site at the International Amphitheater. Blocked in their parade plans, forced out of the parks, they were compelled into violent confrontations with police, who attacked furiously, they said.

Many of their claims of seeking legal permits from a recalcitrant city were supported by the testimony of two former Government officials—Roger Wilkins and Wesley Pomeroy, both of whom had attempted to mediate the dispute with Mayor Richard J. Daley and his assistants and appointees.

In legal circles, the law under which the seven were indicted nearly a year ago was the most important and controversial part of the trial.

It makes it a federal crime to cross state lines intending to incite a riot. It was passed as an amendment to a 1968 civil rights bill, primarily at the urging of conservatives who thought it necessary to curb riots occurring in ghetto areas.

The split verdict in the Chicago Seven trial leaves what is now the Chicago Five to carry to higher courts the first test of the controversial riot rider to the 1968 Civil Rights Act. But the test may never come.

There are dozens of potential issues in the appeals of the five who were convicted yesterday, and they would have to lose on every one of them before the reviewing courts would be faced squarely with the constitutionality of the riot law.

Some of these other issues are as thorny as the big constitutional question itself. They include the rulings of Judge Julius J. Hoffman on countless disputes over evidence, about wiretapping, and over jury instructions. They also include the fairness of the trial itself under Hoffman's direction.

Joint-Trial Techniques

"Conspiracy" is out of the case as a major issue, since the jury acquitted all seven defendants of that charge. The defense lawyers may be expected to argue, however, that they were seriously hurt by the government's use of conspiracy doctrine and joint-trial techniques because the evidence of one defendant's inflammatory remarks was held admissible against all the alleged co-conspirators.

The first appeal is to the Seventh U.S. Circuit Court of Appeals in the same federal building where the original Chicago Eight went on trial nearly five months ago. If the Five lose there, they will petition the Supreme Court, which could turn them down without explanation.

It's common to assume that a major case such as the Chicago riot prosecution will go "all the way to the Supreme Court" for a final ruling, but the draft conspiracy case of Dr. Benjamin Spock and others stopped at the first appellate level when the Court of Appeals in Boston set their convictions aside.

Boston Example

If the Seventh Circuit follows the Boston court's example, it will scrutinize thousands of pages of evidence

with care to see whether, in the light of defense arguments that important First Amendment freedoms are in the balance, the government has shown the criminal "intent" to foment disorder the law requires.

The circuit court will have to weigh the claim that free speech and free association are chilled and repressed by a law that punishes interstate travel and inhibits strong language in the political arena, without forcing the government to prove the defendants' conduct was truly dangerous.

The law, tacked on to the legislation that gave the nation a fair housing law and increased the punishment for racial terrorists, forbids crossing state lines with intent to promote a riot. The Johnson administration opposed it, partly on grounds that it defined a riot too loosely as illegal action by three or more persons.

The Justice Department is expected to emphasize, as it did in its pre-trial briefs, that the law contains many provisions that ease its impact on peaceful political protesters. Defense attorney William M. Kunstler will argue that these words don't save the law and that the Constitution, encouraging robust debate, gives special protection to "outside agitators."

Verdict Leaves Issues for Appeal

By John P. MacKenzie
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