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In The Nation: 'Other Thoughts' in Chicago

By TOM WICKER

CHICAGO, Jan. 21—An air of unreality hangs over the trial of the so-called "Chicago Seven," and not merely because it keeps turning up such witnesses as Country Joe, the leader of the rock group known as Country Joe and the Fish.

Bearded, wearing an Indian headband and purple boots, he gave his name to the court simply as Country Joe. And when the prosecution demanded full identification, Judge Julius Hoffman replied in tones of resignation: "Well, I assume his Christian name must be 'Country.'"

But again, it is not just Judge Hoffman's undeniable theatrical gifts nor even the widespread belief—given frequent official voice by defense counsel—that he favors the prosecution, that makes this landmark trial seem so alien to a conventional assumption of the fitness of things.

Issue Obscured

It is more nearly because there is so little talk or testimony about any of the familiar events that might be thought to be at issue. Surprisingly little is being said about the actual events that surrounded the Democratic convention of 1968, the marches, the police response, the violence in the streets, and although echoes of grim nights in Grant Park keep coming through—their vibrations were certainly bad, as Country Joe put it—the testimony here is focused elsewhere, and rather hazily at that.

Judge Hoffman would not admit into evidence, for instance, the recorded transcript of a news conference held by Jerry Rubin—a defendant—in Chicago on Aug. 30, the day after the convention and the violence ended. Yet Country Joe, who recited the words to his "Vietnam Rag" in their entirety for a silent courtroom, also told at length of meeting Rubin and Abby Hoffman, another defendant, in the Chelsea Hotel in New York the previous winter; they talked about bringing his rock band to Chicago for the "festival" being planned for convention week.

During his cross-examination of Roger Wilkins, a defense witness, Assistant Prosecutor Richard Schulz asked a series of challenging questions about Mr. Wilkins's pre-convention meeting with Rennie Davis, one of the defendants. The defense protested that Mr. Schulz was improperly using previous testimony of other witnesses as a basis for the cross-examination.

Mr. Schulz replied that he was only trying to show that, while Davis might have been telling Mr. Wilkins — then a Justice Department official — that he wanted to avoid violence during the convention, Davis might have been, in fact, "thinking other thoughts."

And that, in the final analysis, is why this sometimes ludricous proceeding seems to have so little relationship, not just to what happened in Chicago in August of 1968, but to any of our familiar notions of what trials are all about, of what constitutes legal guilt, of what the law's limits are in America.

The Chicago Seven are not being tried for committing acts of violence in August of 1968; nor are they even being tried for having *caused* the violence that did take place.

They are, rather, charged with "conspiring" to disrupt the convention by violence, and it is this "conspiracy"—whether it existed—that is the issue in Judge Hoffman's court. It is at least theoretically possible, therefore, that even had there been no violence at all, the Seven could still be on trial here for taking part in the alleged conspiracy.

Intentions as Cause

Violence did, of course, take place in Chicago in August, 1968. It may be that some, or all, of the defendants intended or hoped for violence. But the intention, on the one hand, did not necessarily cause the violence, on the other. If the Seven were on trial here to determine whether acts of intentions of theirs *did* cause the convention-week violence that actually happened, there would be only a factual question of guilt or innocence to be determined—the usual business of a criminal trial.

But that is not the case. The defendants here are the first to be tried under a provision of the 1968 Civil Rights Act that made it a Federal crime to cross a state line with the intent to cause a riot or a disturbance. The constitutionality of this statute has yet to be determined, but the Chicago trial clearly suggests—as, indeed, does the language of the act—that what it seeks to prohibit or penalize is a state of mind, not an overt act.

Burden of Proof

Ironically, it is also pretty clear from this proceeding how difficult it is to prove a state of mind, long afterwards. It is probably more difficult for the prosecution, on whom rests the burden of proof, than for the defendants, which is why Mr. Schulz sounded so preposterous in his efforts to show that Rennie Davis was saying one thing to Roger Wilkins while "thinking other thoughts."

Nevertheless, if the issue of a trial actually comes down to "other thoughts," rather than to actual words and deeds, the deeper question may be whether even "the burden of proof" any longer means anything.