

# Court in Chicago Frees 5 In 1968 Convention Case

## U.S. Appeals Unit Scores Judge Hoffman for 'Antagonistic' Demeanor and Cites 'Other Errors' in Its Reversal Order

NYTimes By JOHN KIFNER NOV 22 1972  
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CHICAGO, Nov. 21 — The United States Court of Appeals for the Seventh Circuit today reversed the five convictions in the Chicago Seven conspiracy case, citing, among other reasons, what it called Judge Julius J. Hoffman's "antagonistic" courtroom demeanor.

The decision freed five radicals—Rennard C. Davis, David T. Dellinger, Thomas E. Hayden, Abbie Hoffman and Jerry C. Rubin—who had been convicted of crossing state lines with the intent of inciting a riot at the 1968 Democratic National Convention. The two other defendants—John Froines and Lee Weiner—had been acquitted at the trial.

Their trial in Federal District Court here, which ended in February, 1970, produced some of the most bizarre courtroom scenes in American jurisprudence.

Throughout the proceedings, Judge Hoffman directed sarcastic remarks and occasional tirades at the defendants and their attorneys. Below his high bench, the defendants at first

munched jellybeans and later shrieked insults at the judge and prosecutors. A defendant was bound and gagged. Spectators raised clenched fists and were ejected by marshals. Scuffles broke out. A defense attorney threw himself across a table, hands outstretched for manacles, sobbing, "take me, too."

In today's ruling, the three-judge panel concluded that "the demeanor of the judge and the prosecutors would require reversal, if other errors did not."

In language sharply critical of Judge Hoffman's controversial conduct of the case, the opinions said his "deprecatory and often antagonistic attitude toward the defense is evident in the record from the very beginning. It appears in remarks and actions both in the presence and absence of the jury."

By a 2 to 1 vote, however, the court upheld the constitutionality of the controversial interstate antiriot statute — the

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defendants and their attorneys, William M. Kunstler and Leonard I. Wineglass to long terms—ranging up to four year and four days for Mr. Kunstler—on charges of contempt of court.

In a hearing in District Court last week, James R. Thompson, United States Attorney, successfully moved that the contempt sentences be limited to a maximum of 177 days and that the citations against Mr. Seale be dropped. Judge Edward T. Gignoux, who has been sent here from Seattle to hear the contempt case, has scheduled his next hearing for Jan. 8.

### Defense Hails Ruling

The Court of Appeals ruling was hailed by defendants' representatives in New York late yesterday as "a tremendous victory for the antiwar movement in this country and for the right of people to dissent and demonstrate."

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so-called "Rap Brown Act"—under which the men were prosecuted. The law forbids the use of mail, telephone, radio, television or other means of interstate commerce with the intent to incite or organize acts or threats of violence.

### Judge's Dissent

In his dissent, Judge Wilbur Pell argued that the statute infringed on the First Amendment rights because of its vagueness and contended that "suppression of the free interchange of ideas and beliefs would be pyrrhic sacrifice of a precious freedom for an illusory safety." The other judges were Thomas Fairchild and Walter J. Cummings Jr.

In addition to citing courtroom demeanor of Judge Hoffmann and the prosecutors, the panel found the following reasons for reversing the convictions:

¶ Judge Hoffmann erred, the opinion held, by inadequately questioning prospective jurors about attitudes possibly prejudicial to the defendants and failed entirely to question prospective jurors about possible effects of pretrial publicity.

¶ The judge erred, the panel said, in sending notes to the deadlocked jury by a marshal without the knowledge of the attorneys. The defense learned of the messages only when they were mentioned in a magazine article appearing several months after the trial.

¶ He erred, the ruling said, in refusing to allow into evidence documents the defendants said stated their intentions in coming to demonstrate at the convention.

¶ And, the court held that Judge Hoffmann had abused his discretion in refusing to

permit the testimony of several of the defense's "expert witnesses"—including that of Wesley Pomery, a former police chief and Justice Department official—in the field of crowd control and law enforcement.

The court ruled that the Government could bring the case to trial again.

But, if it did, the ruling added, the Justice Department would have to disclose wiretaps and electronic surveillance made under the now outlawed "Mitchell doctrine"—named for John N. Mitchell, the former Attorney General, which held that the Government had unlimited surveillance power without court supervision in anything it deemed a national security case.

In Washington, a spokesman for the Justice Department said no decisions had yet been made on whether the Government would take the "case back to court."

Eight radicals and eight policemen, charged with civil rights violations, had originally been indicted in connection with the wild street melees at the 1968 Democratic convention. Seven of the policemen were quickly acquitted; one had a hung jury and his case was dropped.

The case of one of the radicals, the Black Panther chairman, Bobby G. Seale, was severed from the others after Judge Hoffman ordered him bound and gagged as he repeatedly protested that he wanted to act as his own lawyer. The charges against him have since been dropped.

### Acquitted of Conspiracy

The remaining seven defendants were all acquitted of the conspiracy portion of the indictment.

But, as the jury was sent out to deliberate Judge Hoffman sentenced all eight of the de-

Doris Peterson, an attorney who assisted Arthur Kinoy in preparing the appeal, added:

"Although a fantastic victory, the [court's] opinion should have gone further and thrown out the antiriot act as unconstitutional. We have not yet seen the opinion and, therefore, have not yet decided whether or not we will take the question of the unconstitutionality of the statute to the United States Supreme Court."

At a news conference in the offices of the Center for Constitutional Rights, 42d Street and Ninth Avenue, Miss Peterson was joined by Mr. Kinoy; William M. Kunstler, chief defense lawyer at the Chicago trial; and Mr. Dellinger, one of the defendants whose convictions were reversed.

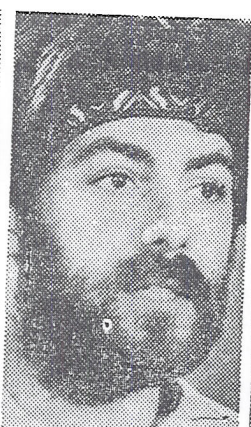
Mr. Kunstler, too, said he had not had a chance to read the appeals court opinion, but com-

mented in response to a question:

"I don't think the Government will have the indecency to retry these defendants."



Associated Press  
Thomas E. Hayden



Jerry C. Rubin



United Press International  
David T. Dellinger



United Press International  
Rennard C. Davis



Associated Press  
Abbie Hoffman