

The Chicago Eight Conspiracy Trial at Fifty: Blind Justice in Polarized Times

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In March 1969, President Richard Nixon’s newly appointed attorney general, John Mitchell, signed off on the prosecution of eight men, all left-wing activists, for their involvement in August 1968 protests at the National Democratic Presidential Nominating Convention in Chicago. Mitchell authorized the prosecutions under the anti-riot provisions of a new, previously unused law. Congress had passed that law, the Anti-Riot Act of 1968, shortly after the urban uprisings in cities across the United States following the assassination of Martin Luther King Jr. in April 1968. That federal law, put bluntly, made it illegal to travel across state lines to “incite a riot.”

Six of the eight men charged under the anti-riot act were prominent leaders of the anti-war and racial justice movement in the United States. One of them, Tom Hayden, was the main progenitor of the student New Left. Another, Dave Dellinger, was the head of the largest anti-war organization in the United States. Abbie Hoffman and Jerry Rubin championed a hybrid organization, the Yippies, which sought to connect countercultural youth with the era’s radical politics. Bobby Seale was the chairman of the Black Panthers. The sixth prominent figure was Rennie Davis, perhaps the anti-war movement’s best nuts-and-bolts organizer.

All of these men, as well as two less well-known anti-war organizers, were charged with conspiring to cross state lines to “incite, promote, encourage, participate in, and carry out a riot” in Chicago during the Democratic convention. Six of those men were also charged with individually crossing state lines to incite a riot in Chicago. Strikingly, months earlier President Lyndon

Johnson’s attorney general, Ramsey Clark, had chosen not to prosecute any protesters for the Chicago convention events. Indeed, Clark (by then the former attorney general) would be called to testify on behalf of the defendants during the Chicago Eight Conspiracy Trial.

Between September 24, 1969, and February 18, 1970, federal prosecutors tried the defendants in the U.S. District Court for the Northern District of Illinois. In general, prosecutors argued that the defendants were revolutionaries who sought to use violence to tear down the United States. Specifically, they contended that the men had successfully conspired to produce mayhem and violent confrontation—a riot—at the 1968 Democratic convention in order to discredit the American political system. Throughout the trial, Julius Hoffman, the presiding judge, made clear his absolute contempt for the defendants. The defendants returned the favor.

The Chicago Eight Conspiracy Trial was, in its time, a *cause célèbre*, making headlines week after week. The trial

forced Americans to confront the meaning and practice of America’s constitutionally protected rights to free speech and assembly, the impartiality of the U.S. judicial system, and the right and limits of American citizens to defend themselves in courts of law. The Chicago Eight would, eventually, be found not guilty on all counts, but not before millions of Americans recoiled from the politically motivated and politically charged prosecution. At the same time, many millions more embraced the kind of fierce “law and order” politics that underlay Richard Nixon’s presidency.

The Chicago Eight trial was a milestone in American legal history. The defendants demanded not only the right to challenge the government’s specific charges but to protest the very legitimacy and fair-mindedness of the case against them. The Chicago Eight, as well as their lawyers, deduced that Julius Hoffman, the judge who was trying them, was far from an impartial arbiter of justice; from the trial’s opening moments Judge Hoffman made clear that he believed them guilty and their politics unacceptable. The defendants responded to his obvious bias by mocking him and refusing to obey his orders. During the trial, many Americans concluded that justice was not always blind, and that politics could and did play a powerful role in how justice was served in the United States.



The Chicago Seven defendants (formerly the Chicago Eight) at a January 1, 1969, news conference in Chicago during their trial on charges of conspiracy to riot at the 1968 Democratic National Convention. From left, standing, are: Abbie Hoffman, John Froines, Lee Weiner, Dave Dellinger, Rennie Davis and Tom Hayden. Seated is defendant Jerry Rubin, with his girlfriend, Nancy Kurshan, who was not part of the trial. (AP Photo)

Abbie Hoffman, the most outspoken of the defendants, argued during the trial that if powerful elites used the justice system to persecute political dissidents and powerless minorities then Americans had the right to call out that injustice, even if that meant disrupting the rule-bound proceedings of the court system itself. He told Judge Hoffman: “When decorum is repression, the only dignity that free men have is the right to speak out.” His powerful and provocative claim about the balance between the need for civility and order and the right of the powerless to be heard still echoes through the halls of justice and in every corridor of power in America’s democracy.

Protests at the Democratic National Convention

In August 1968, around 10,000 people had gathered in Chicago, site of the

Democratic National Convention, to protest primarily against the Vietnam War. Some 12,000 policemen, 6,000 National Guardsmen and 6,000 soldiers were there to meet them. Chicago officials, led by Mayor Richard J. Daley, had denied all permits to the protesters, relenting only at the last minute to allow one rally in Grant Park, just east of the city’s downtown. During the week of demonstrations (many held without legal permission), a few hundred of the 10,000 protesters taunted the police, calling them “pigs” and other derogatory names, and hurling bottles, rocks and other objects. In response to such provocations, and often just in disgust at protesters’ style of dress and political viewpoints, Chicago police beat or tear gassed many of the demonstrators, as well as numerous members of the media and some local residents who were simply caught up in the disorder. Television

networks broadcast images of the police beatings and gas attacks. During the weeklong protests, 668 people were arrested.

Some three months after the protests, following an exhaustive investigation, the National Commission on the Causes and Prevention of Violence issued a report, *Rights in Conflict*. Its subtitle was “The Chicago Police Riot.” Dan Walker, a prominent Chicago lawyer and corporate executive, directed the staff that produced the report. Walker had once been a law clerk for a Supreme Court Chief Justice and was no radical. Nonetheless, he and his team reported:

The nature of the [police] response [to demonstrators’ provocations] was unrestrained and indiscriminate police violence on many occasions, particularly at night. That violence was made

all the more shocking by the fact that it was often inflicted upon persons who had broken no law, disobeyed no order, made no threat ... Police violence was a fact of convention week.

The “Rights in Conflict” report, also known as the “Walker Report,” was made public a couple of weeks after the 1968 presidential election. By no means did all Americans share in that report’s conclusions. At the tail end of 1968, the American people fully agreed on very little. They were visibly and fiercely divided. The Vietnam War, still raging after more than four years, had polar-

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ized Americans. Following the assassination of Martin Luther King Jr., over 100 U.S. cities had been torn apart by civil unrest. Political legitimacy and faith in cultural authority were in short supply at the cusp of 1968 and 1969. Richard Nixon’s painfully thin margin of victory in the 1968 election reflected those divisions and that fraying of faith and respect in the American political system. In a three-person race, Nixon had won the presidency with just 43.4 percent of the popular vote.

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tutions, including the courts, was at a low ebb. African American activists, in particular, feared the police and distrusted the impartiality of the entire legal system. Anti-war demonstrators across the racial spectrum shared these misgivings. What happened at the Chicago Eight trial heightened those activists’ distrust and anger, sharpening their radical critique of the American legal and political system.

On Trial

The men charged with conspiracy to incite a riot were frustrated and appalled by the indictment brought against them by the federal government. Tom Hayden and Rennie Davis, the two most directly responsible for the anti-war demonstration in Chicago, had co-authored and distributed a planning document in May 1968 that categorically called for a peaceful, legal assembly:

[T]he campaign should not plan violence and disruption against the Democratic convention. It should be nonviolent and legal ... any plan of deliberate disruption will drive away people who are worried about arrests or violence, and thus sharply diminish the size and political effect of the mobilization.

The chairman of the National Mobilization to End the War in Vietnam, Dave Dellinger, who oversaw the Chicago organizing efforts of Hayden and Davis, was a life-long pacifist and diligent practitioner of non-violent protest. So pure was Dellinger’s faith in non-violence that he had chosen to go to prison rather than serve in the military during World War II. The government’s charge that Dellinger had conspired to incite violence went against everything for which Dellinger had stood for more than a quarter of a century.

None of the other men charged, save perhaps one, had indicated in their many public talks and private written communiqués that they sought to incite a riot in

Chicago. In fact, the eight men charged with conspiring had not even worked together in planning the convention week protests. Bobby Seale, the indicted Black Panther leader, played no role in organizing the protests. He had only been invited by Tom Hayden to give a short speech to the demonstrators. That short speech, however, was incendiary.

Seale gave his talk the evening after Chicago law enforcement personnel had, in the words of the Walker Report, launched a “police riot.” The Black Panthers had long believed in “self-defense,” by which they meant: when the police launched an unprovoked attack, people had the right, even the obligation, to fight back “by any means necessary.” Thus, in the aftermath of the Chicago police’s mass beatings, Seale told his audience: “If a pig comes up on us and starts swinging a billy club and you check around and you got your piece [gun]—you gotta down that pig in defense of yourself.” He went on, however, to say: “Now there are many kinds of guns.... The strongest weapon that we each individually have is all of us ... united with revolutionary principles. What we gotta do is functionally put ourselves in organizations.” Despite the lack of prior coordination with other protest organizers, that speech landed Seale in the docket with the other defendants. His prosecution was in keeping with law enforcement’s unrelenting campaign to destroy the self-avowed revolutionary Black Panthers. Those efforts would crescendo in the midst of the trial on December 4, 1969, when, in the middle of the night, police raided a Black Panther communal apartment and executed Chicago Black Panther leader Fred Hampton while he was asleep in his bed. (The police would argue that because Black Panthers had killed two Chicago police officers in a shootout the prior month, the officers could take no chances when raiding the site of heavily armed revolutionaries.)

Seale, the only African American defendant, believed that the conspiracy charges against him were a racist travesty.

He demanded that he be allowed to have his own lawyer and that his case be separated from that of the other defendants. Judge Hoffman refused his demand. During the trial's early days, Seale called out regularly that he was being deprived of his right to an attorney of his own choosing: "I fired all these lawyers a long time ago. Charles Garry [Seale's desired lawyer] ain't here, and I want my legal counsel here." And then, "Let the record show ... a black man cannot be discriminated against in relation to his legal defense and that is exactly what you have done." By October 29, Seale had lost all restraint and he verbally accosted the court, calling out the federal prosecutor: "You are a rotten, racist pig, fascist lawyer, that's what you are." A few minutes later, Judge Hoffman ordered Seale to be gagged and chained to his chair. On November 5, Judge Hoffman charged Seale with 16 counts of contempt and sentenced him to four years in jail; his case was severed from that of the other defendants. Seale's furious denunciations of Judge Hoffman and the federal prosecutor, along with his severe punishment set the tone for much of the trial. Seale's treatment incited the other defendants to speak out in defense of the Black Panther leader and of themselves, further disrupting the trial, which further provoked Judge Hoffman and made ever clearer his disdain for the defendants. The trial had become, in the eyes of many observers, a grotesque carnival of injustice.

Throughout the months-long trial, Judge Hoffman made it difficult for the defendants and their lawyers to mount a defense. For example, the judge continually cut off a defense witness, poet Allen Ginsberg, who had participated in the protests. And after Assistant U.S. Attorney Richard Schultz finished cross-examining Ginsberg—a cross examination which focused almost entirely on Ginsberg's homosexuality—the prosecutor loudly sneered, "Goddamn fag"; the judge allowed the remark to go unadmonished. Yet every time the defendants or their lawyers made any aside,

rude or otherwise, they were berated before the jury—and often cited for contempt of court. Likewise, when another defense witness, Linda Morse, tried to explain the reasons the defendants had organized the protest in Chicago, the judge also cut her off. Against all obvious facts, Judge Hoffman insisted, "This is not a political case as far as I am concerned.... I can't go into politics here in this Court." When Defense Attorney William Kunstler attempted to read a section of the Declaration of Independence to Morse, in order to ask her about American citizens' right to protest against their government, the judge stopped him in his tracks: "I can think of nothing ... that makes the Declaration of Independence relevant." The defense wanted to mount a political challenge to the prosecution's case based on Americans' core civil liberties. The judge would not have it.

On February 18, 1970, five of the seven remaining defendants were found guilty of violating the 1968 Anti-Riot Act. The two relatively unknown anti-war defendants were found not guilty. Judge Hoffman sentenced Hayden, Davis, Hoffman, Rubin and Dellinger

to five years in prison and fined each of them \$5,000. The judge also leveled 175 contempt of court charges against the defendants and their lawyers, sentencing them on those charges to a combined total of 19 years in prison.

The Impact of the Trial

The defendants' anger over their mistreatment by an obviously biased judge would be vindicated. In 1972, the U.S. Court of Appeals for the Seventh Circuit reprimanded Judge Hoffman, declaring that his "deprecatory and often antagonistic attitude toward the defense" had denied the defendants their right to a fair and unbiased trial. As a result, the Court of Appeals overturned the findings of guilt against the defendants, including the dozens of contempt citations the judge had issued. In a sense, then, the judicial "system" had worked. The politically motivated charges and politically biased trial proceedings did not lead to the imprisonment of the "Chicago Eight."

Still, the Nixon administration's Justice Department had accomplished a great deal. Six leading Sixties-era dissidents had been forced to spend years of their lives fighting politically motivated charges,

Questions for Discussion

1. What challenges to a fair trial did defendants face in 1968? Do you think the trial would play out in the same way if it were conducted today? How might new technology challenge standards of a fair trial?
2. What do you think Abbie Hoffman meant when he said, "When decorum is repression, the only dignity that free men have is the right to speak out"?
3. Based on what you have learned about events leading up to the trial, do you think the charges against the Chicago Eight were appropriate?
4. Do you think the trial outcomes were appropriate?
5. If you consider the "visibly and fiercely divided" nature of the American people in 1968, do you see similarities or differences from today's sharply polarized landscape?

time that they could have spent fighting for their political causes. The trial also further radicalized the Chicago Eight, as well as many of their fellow activists and sympathizers. By the end of the 1960s, legal change within the “system” seemed, at least to some of those dedicated “Movement” activists, impossible.

At the end of the trial, Abbie Hoffman spoke for those who had lost faith in the legal and political system:

We cannot respect a law, a law that is tyranny ... the courts are in a conspiracy of tyranny ... the only order is insurrection and disrespect, and that's what we showed, and that's what all honorable men of free will will show.

Political fury, motivated not just by the Chicago trial but also by the ongoing Vietnam War and other acts of political repression—such as the murder of Fred Hampton—led a small group of political

radicals to commit acts of terror, including bombings and police shootings, that served no constructive end.

Most Sixties political activists, however, refused to allow government persecution to stop their efforts to create a more just and equitable society. Abbie Hoffman later argued:

We were young, we were reckless, arrogant, and headstrong—and we were right.... We ended legal segregation.... We ended the idea that you could send a million soldiers 10,000 miles away to fight in a war that people do not support. We ended the idea that women are second-class citizens. The big battles that were won in that period of civil war and strife you cannot reverse.

The Chicago Conspiracy Trial reflects the precarious balance between Americans' desire for order and stabil-

ity and our belief in free speech and the right to political dissent. 🌐

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For Further Investigation

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