

The Chicago 8 Trial, 40 Years Later: A Case Study in Teaching *U.S. v. Dellinger* (1969)

“Sacred cows make the tastiest hamburger.”—Abbie Hoffman

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Growing up in an era when protest at national political conventions is carefully contained in “free-speech zones” (often physically removed from the site of the official conventions), students today may have a difficult time conceptualizing the tumultuous scene that was the 1968 Democratic National Convention (DNC) in Chicago. Fueled by the consensus-shattering backdrop of the Vietnam War, the upheaval of a civil rights movement turned violent, the assassinations and abdications of national leaders both beloved and despised, and the cultural chasm opened by a rising generation of questioning youth, the chaos and unrest of that historic confrontation open up a unique opportunity for twenty-first-century youth to review fundamental issues of democracy that continue to shape our political culture.

The Chicago 8 Trial, infamous for its shocking excesses both in and outside a federal courtroom, presents cross-currents of democratic thinking that probe the foundational values of government of, by, and for the people. Like a particularly gruesome car crash, studying the trial offers students an opportunity to confront the complexity of 1960s-era history and values—some admirable, some abhorrent, some seemingly absurd—and consider both where they went wrong and where they created permanent shifts in our national political consciousness.

Charged in the first-ever prosecution of “conspiracy to travel interstate with the intent to incite, organize, promote, encourage, participate in, and carry out a riot,” the eight defendants—some of whom had never met before being named as co-conspirators—represented a cross-section of movements that, in their disparate parts, attempted to protest the Vietnam War, advocate black power, and offer an alternative value system to a country that, they believed, had drifted too far from its original principles. Confronting them

was an array of Chicago city officials and federal prosecutors determined to restore order to a political order in chaos.

In organizing student inquiry into the trial, it is helpful to divide the cast of characters into four groups—the Yippies, the Mobe, the Black Panthers, and the Man—each of which played fundamental roles in shaping the confrontation.

The Yippies

Abbie Hoffman—Youth International Party (YIP, or *Yippie!*) organizer, self-proclaimed cultural revolutionary. Abbie (who dropped his last name during the trial in protest of the autocratic actions of the presiding judge, Julius Hoffman) was already a cultural icon by the time of the trial, famous for action-theater protests, such as raining dollar bills down on the New York Stock Exchange.

Jerry Rubin—organizer of the Berkeley Free Speech movement, the Vietnam Day Committee, and (with Abbie Hoffman) the 1967 anti-Vietnam gathering to levitate



Arianna Berkowitz, '07, of the Francis W. Parker School in Chicago, portraying Abbie Hoffman.

the Pentagon and “exorcise its demons.” Rubin gained early notoriety by tailing unmarked tanker trucks filled with napalm through the streets of Oakland, California, in a car decorated with signs alerting the citizenry to the deadly chemicals being manufactured in their community.

The Mobe

David Dellinger—the oldest of the defendants, a veteran of anti-war and civil rights protests dating back to World War II. Dellinger was active in the National Mobilization to End the War in Vietnam (known as The Mobe), and offered a model of pacifism and conscientious objection

RESOURCES

books

Farber, David, *Chicago '68*, University of Chicago Press (1994).

Feiffer, Jules, et al., *Conspiracy in the Streets: The Extraordinary Trial of the Chicago Eight*, New Press (2006).

Schultz, John, *The Chicago Conspiracy Trial: Revised Edition*, University of Chicago Press (2009).

legal documents

U.S. v. Dellinger, 472 F.2d 340, United States Court of Appeals, Seventh Circuit (1972)

films

"Chicago 10," Paramount Studios (2008)

"Steal This Movie," Lion's Gate Studios (2000)

period music

"Alice's Restaurant," Arlo Guthrie (1966)

"Chicago," Crosby, Stills and Nash (1970)

"For What It's Worth," Buffalo Springfield (1967)

"I Ain't Marchin' Anymore," Phil Ochs (1965)



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that inspired a generation.

Tom Hayden—Students for a Democratic Society (SDS) co-founder and author of *The Port Huron Statement*, the 1962 manifesto that famously mapped out the disillusionment of college students “looking uncomfortably at the world we inherit,” opposing what they saw as the impersonal, racist, and nihilistic culture of atomic self-destruction.

Rennie Davis—SDS organizer who traveled to Vietnam to document the killings of civilians by American troops. Davis advocated forceful disobedience combined with large-scale demonstrating in opposition to the war.

Two additional defendants—John Froines and Lee Wiener—defy categorization. Both served as marshals at the DNC protests; neither were national figures. Froines was a young Ph.D. in chemistry; Wiener was a graduate student in sociology at Northwestern University. Both were acquitted of all charges at the end of the trial.

Representing seven of the eight defendants were William Kunstler and Leonard Weinglass. Kunstler was famous for his work representing clients including Martin Luther King, Jr., Stokely Carmichael, H. Rap Brown, and Malcolm X. Leonard Weinglass had worked with Hayden in community organizing in New Jersey.

The Black Panthers

Bobby Seale—chairman of the Black Panther Party. Although Seale's presence in the Chicago protests was minimal—he attended for just one day and spoke only briefly to the crowd—his indictment on the conspiracy charge offered prosecutors the opportunity to link the chaos of the protests to the confrontational style of the Black Panther Party. Seale's outspoken insistence that he be represented by his own attorney (who was recovering from emergency gall bladder surgery) culminated in a historic confrontation with Judge Hoffman, whose mounting frustration with Seale's verbal abuse led him to

order the defendant bound and gagged in court, before his case was ultimately severed from that of the other seven.

The Man

Judge Julius Hoffman—a federal judge of 16 years, Hoffman, at 74-years-old, symbolized for many all that was unjust about “the establishment” (to his own great frustration). Hoffman considered himself a liberal, boasting in court of his role in issuing the first school desegregation order in the North. Yet his seemingly arbitrary actions against the Chicago 8 defendants laid the groundwork for a cultural showdown in the court.

Thomas Foran and Richard Schulz—federal prosecutors. Foran was known for taking on organized crime and claimed friendship with Robert Kennedy. Schulz seemed the most committed to the prosecution theory of the case—that the defendants had indeed conspired to bring violence to Chicago and deserved punishment.

Richard J. Daley—mayor of Chicago and chairman of the Cook County Democratic party, renowned for his iron-fisted control on the Chicago city council as well as his king-maker status within the national party. After the April 1968 riots that followed the assassination of Dr. King, Daley issued on television a “shoot to kill” order to the Chicago police force, thus establishing his reputation as one who would tolerate no disorder in his city. The presence of the DNC in Chicago was the result of a long-held dream of the mayor to showcase the city as a world-class convention destination.

Legal Issues

Although a host of legal issues lay at the heart of the trials, the two named in the indictments gave shape to the proceedings and offer students the opportunity to explore issues of fairness today. The conspiracy charge that bound the defendants to each other was a prosecutorial effort to link a host of anti-war movements together in one dramatic trial.

Without this charge, each defendant could have been tried separately, most likely with dramatically different results. With the charge, each defendant could be found responsible for the actions of all the others. Students who research the case will find that there was ample evidence that no such conspiracy ever existed—not only were the defendants not working in concert, but documents exist which demonstrate their efforts to avoid violent confrontation. The 1969 jury agreed, and returned verdicts of “not guilty” on the conspiracy charge for each defendant.

A second charge involving crossing state lines to incite a riot opens up for students philosophical and legal arguments regarding the nature of thought vs. action. *U.S. v. Dellinger* is in fact the first-ever indictment on the charge, stemming from the so-called “H. Rap Brown” law. Chicago 8 was in a sense a test case of a new federal strategy for dealing with violent protests by attempting to make organizers and speakers responsible for damages.

Empathy in Action

Because the Chicago 8 trial represents the intersection of so many significant historical currents on the late 1960s, students today have the opportunity to step into history through the interactive modality of a classroom trial reenactment. By their nature, classroom trial reenactments are dramatic and experiential, for they

- demand logical development and persuasion;
- build upon research and citation;
- require collaboration and promote controlled competition;
- teach respect for our on-going justice system; and
- evoke our civic values and moral ideals.

By organizing students into competing teams in an adversarial system and giving them license to step into character, the classroom is transformed into a history laboratory to study the evolution of the

radical ‘60s movements, from dissent to resistance. The trial serves as an ideal culminating activity in a unit covering the history of the Vietnam War, the civil rights movement, the student movement, the generation gap, as well as introducing students to trial procedure and core legal issues associated with free speech.

To organize a reenactment of the Chicago 8 trial, teachers should consider assigning students the following roles:

1. **Prosecution attorneys**—Students in this role work collaboratively to prepare a brief which outlines the charges against the defendants and includes an overall theory of the case, a list of defense witnesses, a list of material evidence drawn from the historical record, and the sequence in which witnesses and evidence will be introduced into trial. Students are encouraged to research and recreate



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the points of view of “The Man,” as outlined above.

- 2. Defense attorneys**—Students in this role produce a brief, following the same format as that of the prosecution, although their empathic energy should be targeted towards recreating the points of view of the Yippies, the Mobe, and the Black Panthers.
- 3. Prosecution and defense witnesses**—Students in these roles portray the cast of characters in the witness pool, extending their learning into the realm of some of the most vibrant cultural figures of the era. Through research projects to prepare witness statements, followed by fully costumed performances, students probe the thinking and actions of a wide array of historical figures. Prosecution witnesses con-

sisted of undercover police officers, city attorneys, Chicago municipal officials, FBI informers, and journalists who covered the protests. Defense witnesses included poet Allen Ginsberg, folk singer Judy Collins, protest singer Phil Ochs, comedian and political activist Dick Gregory, Harvard professor and LSD promoter Timothy Leary, folk singer Arlo Guthrie, radical editor Paul Krassner, writer Norman Mailer, historian Staughton Lynd, civil rights activist Reverend Jessie Jackson, Mayor Richard J. Daley, former co-defendant Bobby Seale, and defendants Abbie Hoffman and Rennie Davis.

- 4. Judge Julius Hoffman**—Infamous for the dozens of contempt citations issued against the defendants and their attorneys, Hoffman can be a case study that offers the student

portraying him the opportunity to explore the meaning of fairness in courtroom proceedings.

Among the more interesting issues that students uncover are

- The era of the 1960s—Vietnam, the student movement, the splintering of radical/moderate movements, etc.
- Free speech ideals—What exactly constitutes “intent to incite a riot?” What is the difference between thought and action? How and when can thoughts be criminalized?
- Trial procedure—How and why did this trial get so out of control?
- The joy of irreverence—Students *love* the sanctioned breaking of rules; it keeps them engaged through the last minute of the activity.
- Connections to today—To what extent does our society tolerate dissent? What forms does it take today? If citizens were to attempt to register a protest today, how would they go about it? Do the DNC protests and the ensuing trial offer any useful models?

In reenacting the trials, teachers must consider how far they are willing to let their students go in “disrupting” the proceedings. The trial transcript is replete with foul language, disrespect for authority, and turning the system on its head. Arguably, these are among the very reasons why a student reenactment of this set of facts is so riveting, for the potential for authentic teenage engagement is very high. Yet teachers must gauge their own community’s standards and climate and determine what limits should be agreed upon at the outset. The result will be a riveting exploration of a pivotal historical moment that students and teachers alike will not soon forget. 🌐

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